

No. 11657

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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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STORK RESTAURANT, INC., a corporation,  
Appellant,

vs.

N. SAHATI, ZAFER SAHATI, SALLY SA-  
HATI, EDMOND SAHATI, ALFRED AN-  
SARA, A. E. SYUFY,  
Appellees.

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Transcript of Record

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Upon Appeal from the District Court of the United States  
for the Northern District of California,  
Southern Division

FILED  
OCT 3 1947  
PAUL S. BERNIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Attorney for Defendants and Appellees.

Trial before the Honorable Michael J. Roche,  
District Judge, sitting without a jury.

In the District Court of the United States, Northern  
District of California, Southern Division

25707 R

STORK RESTAURANT, INC., a corporation,  
Plaintiff,

vs.

N. SAHATI, ZAFER SAHATI, SALLY SA-  
HATI, EDMOND SAHATI, ALFRED AN-  
SARA, A. E. SYUFY, FIRST DOE, SECOND  
DOE, THIRD DOE, FOURTH DOE, ROE  
AND ROE, a copartnership, BLACK COM-  
PANY, a corporation,

Defendants.

COMPLAINT FOR INJUNCTION  
AND DAMAGES

Count One

1. The plaintiff does not know the true names of the defendants sued herein under the names of First Doe, Second Doe, Third Doe, Fourth Doe, Roe and Roe, a copartnership, and Black Company, a corporation; that said names are fictitious and that plaintiff prays that when it shall have ascertained the true names of said defendants, it may be permitted to amend this complaint by inserting herein the true names of said defendants in lieu of said fictitious names.

2. The ground upon which the jurisdiction of the court depends is diversity of citizenship. Plain-

tiff is a corporation [1\*] incorporated under and existing by virtue of the laws of the State of New York with its principal place of business at 3 East 53rd Street, New York City, New York. The defendants are all residents and citizens of the City and County of San Francisco, State of California. The matter in controversy herein exceeds, exclusive of interests and costs, the sum of Three Thousand Dollars (\$3,000.00).

3. The plaintiff now is, and continuously since on or about August 15, 1934, has been operating, maintaining and conducting a restaurant, cafe and night club business under the name "The Stork Club" at No. 3 East 53rd Street, New York City, New York, supplying therein and thereat food, beverage, music and dancing facilities; said plaintiff upon the commencement of said business adopted for the same the trade name "The Stork Club" and continuously thereafter and since on or about August 15, 1934, has used said trade name in the conduct and operation of its aforesaid business, and has been and now is the sole and exclusive owner of, and solely and exclusively entitled to the use of said trade name "The Stork Club."

4. The plaintiff has expended considerable effort and large sums of money, aggregating in excess of Five Hundred Thousand Dollars (\$500,000.00) in the last eleven years, advertising and otherwise promoting its aforesaid business and trade name by

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\* Page numbering appearing at foot of page of original certified Transcript of Record.

various methods and through various media; plaintiff employes approximately one hundred forty (140) people to provide several hundred customers each day between 11:30 a.m. and 4:00 a.m. with relatively high-priced and high quality food, beverages and entertainment which service yields an average annual gross income of over Five Hundred Thousand Dollars (\$500,000.00); the value of plaintiff's trade name "The Stork Club" is far in excess of Three Thousand Dollars (\$3,000.00).

5. The defendants, after plaintiff had first adopted [2] and used said trade name of "The Stork Club," and on or about April 6, 1945, began the operation of, and continuously since said date have been operating and conducting, a bar, tavern and cocktail lounge at No. 200 Hyde Street, in the City and County of San Francisco, State of California, under the name of "Stork Club" and have wilfully, wrongfully, unlawfully and in utter disregard of the rights of said plaintiff, and against its wish and without its permission, assumed and appropriated to their own use the name "Stork Club" and at all of said times have been and now are using said name in the conduct of said business, against the will and consent of plaintiff, to the great damage and detriment of said plaintiff.

6. By reason of the premises and as a proximate result of the aforesaid acts of said defendants, the trade name, the good-will and the reputation and standing of plaintiff have been and will be irreparably damaged, and the trade and business and

good will of plaintiff and the extension and development of its patronage throughout the United States of America, and particularly within the State of California and the City and County of San Francisco, have been, and will be irreparably damaged and interfered with.

7. The defendants will, unless restrained and enjoined by the above-entitled Court, continue to operate and conduct their aforesaid business under the name of "Stork Club" and will continue to do each and all of the acts and things above complained of; plaintiff has no plain, speedy and adequate remedy at law, and actions at law will not afford plaintiff plain, speedy or adequate remedy for said continuing acts of said defendants, and the remedy hereby sought is necessary to prevent a multiplicity of judicial proceedings.

8. Plaintiff has heretofore caused a demand to be made upon said defendants that said defendants desist and discontinue [3] the use of said trade name "Stork Club," but the said defendants have continuously neglected, failed and refused to do so.

9. Plaintiff has not given affirmative consent or authority to defendants or any of them to operate a bar, tavern, cocktail lounge or any other business under the name of "The Stork Club" or "Stork Club."

10. All of the foregoing acts and things so done or caused to be done by said defendants and each of them, have been to the injury and damage of

plaintiff in the sum of Five Thousand Dollars (\$5,000.00).

### Count Two

1. Plaintiff hereby refers to and makes a part hereof all of the allegations contained in paragraphs 1, 2, 3, 4, 7 and 10 of Count One.

2. During all of said time herein mentioned and continuously since on or about August 15, 1934, the plaintiff has used in conjunction with its use of the name, "The Stork Club" in its business, an insignia consistng of a stork standing on one leg and wearing a high hat and monocle.

3. By reason of the competent and efficient manner in which plaintiff has been conducting and operating "The Stork Club" as aforesaid, and by reason of the large sums of money expended by plaintiff in advertising and otherwise promoting its said business, the said plaintiff's "The Stork Club" has acquired a widespread and valuable reputation, and has commanded and now commands an extensive patronage throughout the United States; during all of the time said business has been conducted, the same has been, and now is patronized by persons both from in and about the City of New York and from the United States at large, including the metropolitan area of San Francisco, California; during all of said time, said business has been and now is patronized by [4] persons of prominence in social, literary, artistic, professional, commercial, official and cinematic circles; on occasions too nu-

merous to mention, said business during all of said time has been, and now is, referred to, written of, featured and advertised in various newspapers, magazines, periodicals and other printed matter of local and national circulation; that by reason of the foregoing, the said business of plaintiff conducted and operated under the name "The Stork Club" and with the aforesaid insignia used in conjunction therewith, became and now is famous, and as "The Stork Club" is known to countless persons in and about the City and County of San Francisco, State of California.

4. The said defendants and each of them well knowing the foregoing, and with the intention and for the purpose of fraudulently and unlawfully appropriating to themselves and for their own use and benefit, the trade-name, good-will, fame and reputation and trade of plaintiff, on or about April 6, 1945, began the operation of, and continuously since April 6, 1945, have been operating and conducting, a bar, tavern and cocktail lounge at No. 200 Hyde Street, in the City and County of San Francisco, State of California, under the name "Stork Club," supplying and furnishing therein beverages and entertainment; said defendants at all times have displayed and maintained, and now are displaying and maintaining, signs, affixed to the exterior of said place of business, and containing the words "Stork Club," and in addition thereto, insignia similar to the aforementioned insignia of plaintiff, and consisting of a stork standing on one leg and wearing a high hat; said defendants at all

of said times, have advertised their said business in the City and County of San Francisco under the name "Stork Club" and have caused said business to be listed in the San Francisco telephone directory under said name; furthermore plaintiff is informed and believes and upon such information and belief alleges that defendants have [5] from time to time represented their business to divers governmental departments of the State of California and of the City and County of San Francisco, as the "Stork Club" and have obtained various municipal and State licenses in and under said name; plaintiff on information and belief, alleges that, from time to time during the period in this paragraph stated, defendants have caused the aforesaid name "Stork Club" and related insignia as hereinabove described, to be used in and about the interior of said defendants' place of business and to be advertised and publicized to patrons therein; said defendants and each of them, have been and now are, profiting from the fame and repute adjunctive to the aforesaid name and related insignia of plaintiff's business.

5. By reason of the premises and as a proximate result of the aforesaid acts of said defendants, great confusion has arisen in the minds of the public and will continue to arise and exist and many of the public will be deceived and misled into believing that defendants' business is connected or associated with, or under the supervision of plaintiff; by reason of the premises the trade name, the goodwill and the reputation and standing of plaintiff have been and will be irreparably damaged and the



trade and business and good-will of plaintiff and the extension and development of its patronage throughout the United States of America and particularly within the State of California and the City and County of San Francisco, have been and will be irreparably damaged and interfered with.

6. Plaintiff has heretofore caused a demand to be made upon said defendants that said defendants desist and discontinue the use of said trade name, "Stork Club" and the aforesaid related insignia, but the said defendants have continuously neglected, failed and refused to do so.

7. Plaintiff has not given affirmative consent or authority [6] to defendants or any of them to operate a bar, tavern, cocktail lounge or any other business under the name of "Stork Club" or "The Stork Club" or to use insignia indicating and relating to the same.

Wherefore, plaintiff prays judgment as follows:

(1) That plaintiff be granted a preliminary and final injunction, enjoining the defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with defendants from:

Using in any way, shape or manner, upon or in connection with any place of business conducted by or for them, including the place of business described in this complaint, or in which they are, or any of them is, or hereafter may become interested, and in any and all advertising, printed, written or

printed matter, directories, and licenses, of every description, plaintiff's trade name "The Stork Club" or any name similar thereto, including the name "Stork Club" and from using in conjunction with any such name or independently any insignia similar to or suggestive of that of plaintiff;

(2) That plaintiff have judgment against defendants and each of them in the sum of Five Thousand Dollars (\$5,000.00) and for its costs of suit herein incurred;

(3) That plaintiff have such other and further order, judgment and decree in the premises as to this Court may appear meet, just and equitable, both pendente lite and as a part of the final judgment and decree herein.

MALONE & SULLIVAN,

Attorneys for Plaintiff. [7]

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State of New York,  
City of New York—ss.

Andrew Gray, being first duly sworn, deposes and says:

That he is an officer of Stork Restaurant, Inc., the plaintiff named in the foregoing action, to wit, the Secretary thereof; that he has read the foregoing Complaint for Injunction and Damages and knows the contents thereof; that the same is true of his own knowledge except as to the matters

therein stated on information and belief and as to those matters that he believes the same to be true.

/s/ ANDREW GRAY.

Sworn to and subscribed before me this 17th day of December, 1945.

[Seal]                    ANDREW DE SANTIS,  
Notary Public in and for the State of New York,  
City of New York.

[Verification as to Notary.]

[Endorsed]: Filed Feb. 25, 1946. [8]

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[Title of District Court and Cause.]

MOTION AND NOTICE OF MOTION FOR  
PRELIMINARY INJUNCTION

Motion for Preliminary Injunction

Stork Restaurant. Inc., a corporation, plaintiff  
above named, moves the Court for:

A preliminary injunction enjoining defendants above named, their agents, servants, employees and attorneys and all persons in active concert or participation with defendants from using, in any way, shape or manner upon or in connection with any place of business conducted by or for them, including the place of business described in plaintiff's complaint on file herein and located at No. 200 Hyde Street, San Francisco, California, or in which they are, or any of them is, or hereafter may become,

interested and in any and all advertising, printed, written or painted matter, directories, and licenses or every description, plaintiff's trade name [9] "The Stork Club" and from using in conjunction with such name, or independently, any insignia similar to, or suggestive of, that of plaintiff, said insignia consisting of a stork standing on one leg and wearing a high hat and monocle, all as in the complaint more particularly described.

Said motion will be made upon the ground that said actions constitute unfair competition and an infringement and invasion of plaintiff's trade name, and will inflict irreparable injury upon plaintiff for which money will not be adequate relief; and that plaintiff has no plain, speedy or adequate remedy at law.

Said motion will be based upon the verified complaint of plaintiff on file herein, and upon the records and files of the above-entitled action and upon such other and further evidence as may be produced at the hearing of said motion.

Dated: San Francisco, California, February 25, 1946.

MALONE & SULLIVAN,  
Attorneys for Plaintiff.

Notice of Motion for Preliminary Injunction

To: N. Sahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara and A. E. Syufy, 200 Hyde Street, San Francisco, California:

Please take notice that the undersigned will

bring the within and foregoing Motion for Preliminary Injunction on for hearing before the above-entitled Court in the Courtroom of Michael J. Roche, Judge of said Court, in the Post Office Building, Seventh and Mission Streets, San Francisco, California, on the 4th day of March, 1946, at ten o'clock a.m. of said day or as soon thereafter as counsel can be heard.

Dated: This 25th day of February, 1946.

MALONE & SULLIVAN,  
Attorneys for Plaintiff.

[Endorsed]: Filed Feb. 25, 1947. [10]

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[Title of District Court and Cause.]

AFFIDAVIT OF DEFENDANT N. SAHATI,  
IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

State of California,  
City and County of San Francisco—ss.

N. Sahati, being first duly sworn, deposes and says:

That he was one of the owners of the "Stork Club," a bar and cocktail lounge at No. 200 Hyde Street, in the City and County of San Francisco, State of California, and is now the manager thereof.

That affiant and the other named defendants purchased said business on April 6, 1945, from the former owner thereof, to-wit: one William Bush, and that affiant and said other defendants have owned and operated said business since said date; that on

April 6, 1945, and for a long time prior thereto said premises were owned [14] and operated under said name of "Stork Club," and that affiant and said other defendants have never changed said name but have continued to operate said business thereunder; that said business is a bar, tavern and cocktail lounge and is not what is commonly known as a night club; that affiant and other defendants do not have music, entertainment or dancing facilities in said premises; that plaintiff's place of business is approximately 3000 miles away from defendants' place of business; that affiant and said other defendants have never had and do not now have any intention to trade upon the name or reputation of said plaintiff or its place of business; that affiant's place of business is operated daily and open to the public from the hour of 10:00 o'clock a.m. to the hour of 12:00 o'clock midnight seven days a week; that affiant's business is one dealing in medium priced food and beverages and that said business does not furnish any music or entertainment to his patrons; that at the time that affiant and his co-defendants purchased said business and began the operation thereof there were on said premises as part of the equipment thereof certain napkins and other paper goods with the insignia of a stork thereon and the words "Stork Club"; that said paper goods were part of the assets of said business and were used by defendants for a short time in the operation of their said business, but that when said supply became exhausted defendants did not thereafter order any further supply of paper goods similar in char-

acter or printed with the insignia of a stork or with the words "Stork Club" thereon, and have not since used the same.

That neither affiant nor his co-defendants have received any notification from plaintiff at any time since the purchase of said business demanding that said defendants desist or discontinue the use of said name "Stork Club."

That at the time said defendants purchased said business it was a going concern and included among its assets the large Neon [15] sign on the outside of said premises with the words thereon "Stork Club"; that said sign does not have thereon any picturization of a stork in any manner or form but simply the words "Stork Club"; that said sign is a costly sign and that it would cost defendants approximately five hundred (500) dollars to replace the same.

That defendants do not advertise in any newspaper, magazine or periodical of local or national circulation except a few complimentary ads; that defendants do not in any manner hold themselves out to be connected in any way with the "Stork Club" of New York; that defendants have never had and do not have any intention of fraudulently or unlawfully appropriating to themselves or for their own use or benefit the trade name, good will, fame or reputation or trade of plaintiff in any manner whatsoever; that it is true that defendants have listed their place of business in the San Francisco Telephone Directory under the name of "Stork Club" and have also listed their business with

various governmental departments of the State of California and the City and County of San Francisco as the "Stork Club," and have obtained necessary licenses under said name, but affiant alleges that said acts are in no way connected, directly or indirectly, with the alleged Stork Club of New York City.

That defendants' business is entirely different from that of plaintiff in that plaintiff's place of business is very large and it is principally that of a restaurant, cafe and night club, supplying food, beverages, music, floor show and dancing facilities, whereas defendants' business is small and is simply supplying beverages and food at ordinary prices to their patrons without any musical entertainment, floor show or dancing facilities of any kind, except on occasions a pianist.

That defendants' place of business consists of a bar and approximately ten (10) small coffee tables, while plaintiff's business is innumerable times greater in area and in number of [16] employees and in character of operation.

That at no time was it or is it the intention of defendants to trade upon the name of plaintiff in any manner, but simply to operate a tavern and bar and in conjunction therewith to furnish simple foods to its patrons, and that defendants have at no time held themselves out to be connected with plaintiff in any manner whatsoever; that defendants have a modest investment in said business, and if a preliminary injunction is granted against defend-



ants their investment will be irreparably damaged and lost.

That the word "Stork" is the name of a bird and not that of any of the owners or stockholders or officers of the plaintiff's restaurant, and that said name is a general term in which no one can obtain an exclusive right of appropriation to his own use or any sole or exclusive ownership.

Wherefore, affiant respectfully prays that the Court deny plaintiff's motion for a preliminary injunction.

N. SAHATI.

Subscribed and sworn to before me this 15th day of April, 1946.

[Seal] CHALMER MUNDAY,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed April 15, 1946. [17]

[Title of District Court and Cause.]

### MOTION TO DISMISS

The defendants N. Sahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara and A. A. Syufy above-named hereby move the above-entitled Court to dismiss the above-entitled action because the complaint fails to state a claim against defendants upon which relief can be granted.

Dated: April 15, 1946.

ALBERT PICARD,

Attorney for said Defendants.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed April 15, 1946. [18]

[Title of District Court and Cause.]

At a Stated Term of the District Court of the United States for the Northern District of California, Southern Division, held at the Court Room thereof, in the City and County of San Francisco, on Monday, the 15th day of April, in the year of our Lord one thousand nine hundred and forty-six.

Present: The Honorable Michael J. Roche, District Judge.

MOTION FOR A PRELIMINARY INJUNCTION DENIED, MOTION TO DISMISS DENIED

This case came on regularly this day for hearing of motion for a preliminary injunction. After hearing the arguments of Raymond Sullivan, Esq., for plaintiff, and Albert Picard, Esq., for defendant, it is Ordered that said motion be denied without prejudice. Further Ordered that the motion to dismiss be denied; that the defendant be allowed twenty days to answer, and that this cause be continued to April 29, 1946, to be set. [19]

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[Title of District Court and Cause.]

ANSWER

Defendants N. Sahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara and A. E. Syufy for answer to the first count set forth in the complaint herein:

I.

Allege that they are without knowledge or infor-

mation sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of said first count.

## II.

Deny that the matter in controversy herein exceeds, exclusive of interest and costs, the sum of three thousand (\$3,000) dollars.

## III.

Deny that plaintiff has been or now is or ever was the [20] sole or exclusive owner or solely or exclusively or at all entitled to the use of the trade name "The Stork Club", and as to all of the other allegations of paragraph 3 of said first count allege that defendants are without knowledge or information sufficient to form a belief as to the truth of said allegations.

## IV.

Deny that the value of plaintiff's trade name "The Stork Club" is far in excess of three thousand (\$3,000) dollars or any other amount, and deny that the trade name "The Stork Club" is the plaintiff's trade name or that plaintiff is the owner thereof and deny that it has any value, and as to all of the other allegations of paragraph 4 of said first count allege that defendants are without knowledge or information sufficient to form a belief as to the truth of said allegations.

## V.

Answering paragraph 5 of said first count defendants admit that on or about April 6, 1945, they

became the operators of and ever since have operated and conducted a bar, tavern and cocktail lounge at 200 Hyde Street, in the City and County of San Francisco, State of California, under the name of "Stork Club", but except as to the matters herein specifically admitted deny each and every allegation set forth in said paragraph 5 of said first count.

#### VI.

Deny each and every allegation contained in paragraph 6 of said first count.

#### VII.

Answering paragraph 7 of said first count defendants admit that unless restrained and enjoined by this Court they will continue to operate and conduct their business under the name of "Stork Club", but except as herein specifically admitted deny each and every allegation contained in said paragraph 7. [21]

#### VIII.

Deny that plaintiff has ever caused a demand to be made upon said defendants that they desist or discontinue the use of said trade name "Stork Club".

#### IX.

Answering paragraph 9 of said first count defendants allege that the name "Stork Club" has been used in said premises at 200 Hyde Street by the defendants herein and by the predecessor in interest of said defendants who sold said business

and name to said defendants at all times since the 1st day of January, 1940, and that the said name was publicly and openly displayed in said premises and that the said plaintiff has been guilty of laches and delay in taking no action of any kind or character whatsoever against said defendants or the predecessor in interest of said defendants for the period of more than six (6) years from the first use of said name in said premises.

### X.

Deny each and every allegation contained in paragraph 10 of said first count and deny that the said plaintiff has been injured or damaged in any amount whatsoever by said defendants or any of them.

Said defendants for answer to the second count set forth in said complaint:

### I.

Answering paragraphs 1, 2, 3, 4, 7 and 10 of count one of said complaint as incorporated in count two thereof by reference, said defendants hereby refer to and repeat and make a part hereof for all purposes all of the allegations contained in paragraphs I, II, III, IV, VII and X of the answer to the first count herein set forth.

### II.

Allege that they are without knowledge or information [22] sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of said second count.

## III.

Answering paragraph 3 of said second count defendants deny that the plaintiff's place of business has at any time been patronized in large part by persons from the metropolitan area of San Francisco, California, and deny that it is known to countless persons in or about the City and County of San Francisco, State of California, and except as to the matters herein specifically denied allege that defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph 3 of said second count.

## IV.

Answering paragraph 4 of said second count defendants admit that since on or about April 6, 1945, they have been operating and conducting a bar, tavern and cocktail lounge at 200 Hyde Street, in the City and County of San Francisco, State of California, under the name of "Stork Club" and that they furnished therein beverages and have displayed the name "Stork Club", and that they have advertised under said name "Stork Club" and have caused said name to be listed in the San Francisco Telephone Directory and have used said name to governmental departments of the State of California and the City and County of San Francisco and have obtained licenses under said name, but except as to said matters so specifically admitted herein said defendants deny each and every allegation contained in paragraph 4 of said second count.

## V.

Deny each and every allegation contained in paragraph 5 of said second count.

## VI.

Deny that plaintiff has ever caused a demand to be made upon said defendants that they desist or discontinue the use of [23] said trade name "Stork Club" or said insignia mentioned in said count.

## VII.

Answering paragraph 7 of said second count defendants allege that the name "Stork Club" has been used at said premises at 200 Hyde Street by the defendants herein and by the predecessor in interest of said defendants who sold said business and name to said defendants at all times since the 1st day of January, 1940, and that the said name was publicly and openly displayed in said premises and that the said plaintiff has been guilty of laches and delay in taking no action of any kind or character whatsoever against said defendants or the predecessor in interest of said defendants for the period of more than six (6) years from the first use of said name in said premises.

Said defendants, for a further and separate defense to said complaint and to each of the counts therein set forth, allege that the right of action set forth in the complaint did not accrue within six (6) years before the commencement of this action.

Wherefore, said defendants pray that plaintiff

take nothing by this action and that said defendants have judgment against said plaintiff for their costs of suit incurred herein.

ALBERT PICARD,

Attorney for Defendants N. Sahati, Zafer Sahati,  
Sally Sahati, Edmond Sahati, Alfred Ansara  
and A. E. Syufy.

State of California,

City and County of San Francisco—ss:

N. Sahati, being first duly sworn, deposes and says:

That he is one of the defendants named in the foregoing [24] answer; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information or belief, and as to such matters he believes it to be true.

N. SAHATI.

Subscribed and sworn to before me this 18th day of July, 1946.

[Seal] CHALMER MUNDAY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed July 20, 1946. [25]



[Title of District Court and Cause.]

STIPULATION AND ORDER  
CONTINUING TRIAL

It Is Hereby Stipulated, by and between the parties hereto, that the above entitled cause heretofore set for trial on the 3rd day of December, 1946, without a Jury, may be set for trial, without a Jury, on a date suitable to the Court during the first half of the month of January 1947, and without the giving of any other or further notice to the parties hereto.

Dated: November 6, 1946.

MALONE & SULLIVAN,  
Attorneys for Plaintiff.

ALBERT PICARD,  
Attorney for Defendants.

It Is So Ordered:

MICHAEL J. ROCHE,  
Judge of the United States  
District Court.

[Endorsed]: Filed Nov. 7, 1946. [26]

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[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED AMENDMENTS  
TO DEFENDANTS' PROPOSED FIND-  
INGS OF FACT AND CONCLUSIONS OF  
LAW

Comes Now, Stork Restaurant, Inc., a corpora-

tion, plaintiff above named, and offers and files herein its Proposed Amendments to Defendants' Proposed Findings of Fact and Conclusions of Law, served on said plaintiff on the 8th day of April, 1947:

1. Amend Finding of Fact No. I so that said finding shall read as follows:

I.

“The ground upon which the jurisdiction of the court depends is diversity of citizenship. Plaintiff is a corporation incorporated under and existing by virtue of the laws of the State of New York with its principal place of business at 3 East 53rd Street, New York City, New York. The defendants are [27] all residents and citizens of the City and County of San Francisco, State of California. The matter in controversy herein exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars (\$3,000.00).”

2. Amend Finding of Fact No. II so that said finding shall read as follows:

II.

“The plaintiff now is, and continuously since on or about August 15, 1934 has been operating, maintaining and conducting a restaurant, cafe and night club business under the name ‘The Stork Club’ at No. 3 East 53rd Street, New York City, New York, supplying therein and thereat food, beverage, music and dancing

facilities; said plaintiff upon the commencement of said business adopted for the same the trade name 'The Stork Club' and continuously thereafter and since on or about August 15, 1934, has used said trade name in the conduct and operation of its aforesaid business, and has been and now is the sole and exclusive owner of, and solely and exclusively entitled to the use of said trade name 'The Stork Club'."

3. Amend Finding of Fact No. III so that said finding shall read as follows:

### III.

"The plaintiff has expended considerable effort and large sums of money, aggregating in excess of Seven Hundred Twenty-five Thousand Dollars (\$725,000.00) in the last eleven years, advertising and otherwise promoting its aforesaid business and trade name by various methods and through various media; plaintiff employs approximately two hundred forty-four (244) people to provide several hundred customers each day between 11:30 a.m. and 4:00 a.m. with relatively high-priced and high quality food, beverages and entertainment which service yields [28] an average annual gross income of over Eight Hundred Thousand Dollars (\$800,000.00); the value of plaintiff's trade name 'The Stork Club' is far in excess of *Thousand* Dollars (\$3,000.00)."

4. Amend Finding of Fact No. IV so that said finding shall read as follows:

IV.

“The defendants, after plaintiff had first adopted and used said trade name of ‘The Stork Club’, and on or about March 14, 1945, began the operation of, and continuously since said date have been operating and conducting, a bar, tavern and cocktail lounge at No. 200 Hyde Street, in the City and County of San Francisco, State of California, under the name of ‘Stork Club’ and have wilfully, wrongfully, unlawfully and in utter disregard of the rights of said plaintiff, and against its wish and without its permission, assumed and appropriated to their own use the name ‘Stork Club’ and at all of said times have been and now are using said name in the conduct of said business, against the will and consent of plaintiff, to the great damage and detriment of said plaintiff.”

5. Amend Finding of Fact No. V so that said finding shall read as follows:

V.

“By reason of the premises and as a proximate result of the aforesaid acts of said defendants, the trade name, the good-will and the reputation and standing of plaintiff have been and will be irreparably damaged, and the trade and business and good-will of plaintiff and the extension and development of its patronage throughout the United States of America, and

particularly within the State of California and the City and County of San Francisco, have been, and will be irreparably damaged and interfered with." [29]

6. Strike out Finding of Fact No. VI.
7. Strike out Finding of Fact No. VII.
8. Amend Finding of Fact No. IX that said finding shall read as follows:

#### IX.

“By reason of the competent and efficient manner in which plaintiff has been conducting and operating ‘The Stork Club’ as aforesaid, and by reason of the large sums of money expended by plaintiff in advertising and otherwise promoting its said business, the said plaintiff’s ‘The Stork Club’ has acquired a widespread and valuable reputation, and has commanded and now commands an extensive patronage throughout the United States; during all of the time said business has been conducted, the same has been, and now is patronized by persons both from in and about the City of New York and from the United States at large, including the metropolitan area of San Francisco, California; during all of said time, said business has been and now is patronized by persons of prominence in social, literary, artistic, professional, commercial, official and cinematic circles; on occasions too numerous to mention, said business during all

of said time has been, and now is, referred to, written of, featured and advertised in various newspapers, magazines, periodicals and other printed matter of local and national circulation; that by reason of the foregoing, the said business of plaintiff conducted and operated under the name 'The Stork Club' and with the aforesaid insignia used in conjunction therewith, became and now is famous, and as 'The Stork Club' is known to countless persons in and about the City and County of San Francisco, State of California."

9. Amend Finding of Fact No. X so that said finding shall read as follows: [30]

X.

"The said defendants and each of them well knowing the foregoing, and with the intention and for the purpose of fraudulently and unlawfully appropriating to themselves and for their own use and benefit, the trade-name, goodwill, fame and reputation and trade of plaintiff, on or about March 14, 1945, began the operation of, and continuously since March 14, 1945, have been operating and conducting, a bar, tavern and cocktail lounge at No. 200 Hyde Street, in the City and County of San Francisco, State of California, under the name 'Stork Club,' supplying and furnishing therein beverages and entertainment; said defendants at all of said times have displayed and maintained, and now are displaying and maintain-

ing, signs. affixed to the exterior of said place of business, and containing the words 'Stork Club,' and in addition thereto, insignia similar to the aforementioned insignia of plaintiff, and consisting of a stork standing on one leg and wearing a high hat; said defendants at all of said times, have advertised their said business in the City and County of San Francisco under the name 'Stork Club' and have caused said business to be listed in the San Francisco telephone directory under said name; said defendants at all of said times have used said name 'Stork Club' to governmental departments of the State of California and the City and County of San Francisco and have obtained licenses under said name; said defendants, from time to time during their operation of their aforesaid business have caused the aforesaid name 'Stork Club' and related insignia as hereinabove described, to be used in and about the interior of said defendants' place of business and to be advertised and publicized to patrons therein; said defendants, at all times, have used the name 'Stork Club' in connection with all financial and commercial transactions entered into by them in respect to said business; said defendants and each of them have been and now are, [31] profiting from the fame and repute adjunctive to the aforesaid name and related insignia of plaintiff's business."

10. Amend Finding of Fact No. XI so that said finding shall read as follows:

## XI.

“By reason of and as a proximate result of the acts of said defendants herein set forth, confusion has arisen in the minds of the public and will continue to arise and exist, and there is a reasonable liability and likelihood that such confusion will arise and exist; by reason of and as a proximate result of the said acts of said defendants, many of the public will be deceived and misled into believing that defendants’ business is connected or associated with, or under the supervision of plaintiff, and there is a reasonable liability and likelihood that such deception will arise and exist; by reason of the premises and the said acts of said defendants, the trade name, the good-will and the reputation and standing of plaintiff have been and will be irreparably damaged and the trade and business and good-will of plaintiff and the extension and development of its patronage throughout the United States of America and particularly within the State of California, and the City and County of San Francisco, have been and will be irreparably damaged and interfered with.”

11. Amend Finding of Fact No. XII so that said finding shall read as follows:

## XII.

“Plaintiff caused demands to be made upon said defendants on May 4, 1945, and again on May 15, 1945, that said defendants desist and



discontinue the use of said trade-name 'Stork Club' and the aforesaid related insignia but the said defendants have continuously neglected, failed and refused to do so." [32]

12. Amend Finding of Fact No. XIII so that said finding shall read as follows:

### XIII.

"The name 'Stork Club' was first used at said premises at 200 Hyde Street, San Francisco, on March 1, 1943, by one W. N. Bush; said W. N. Bush, on March 14, 1945, sold and transferred to said defendants the business formerly conducted by him at 200 Hyde Street, together with the liquor licenses appertaining thereto, but did not at said time, or any other time, or at all, sell, transfer or assign said name 'Stork Club' to defendants."

13. Add the following Findings of Fact:

### XIV.

"Said defendants, N. Sahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara, A. E. Syufy, on March 14, 1945, and continuously thereafter for several months and until the latter part of 1945, were co-partners in the ownership and operation of the aforesaid business at 200 Hyde Street, San Francisco, and immediately thereafter said defendants, Zafer Sahati, Sally Sahati, Edmond Sahati and A. E. Syufy, were, continuously thereafter have been and now are co-partners in said business."

## XV.

“The defendants have not given a satisfactory explanation for the choice by them, or any of them, or by their predecessor in interest, of the name ‘Stork Club’ or its related insignia for their place of business.”

## XVI.

“The said words ‘Stork Club’ and in its related insignia are purely and entirely fanciful and artificial and in no way descriptive of either the nature, kind or location of said business of said plaintiff.” [33]

## XVII.

“The defendants will, unless restrained and enjoined by the above-entitled Court, continue to operate and conduct their aforesaid business under the name of ‘Stork Club’ and will continue to do each and all of the acts and things above complained of; plaintiff has no plain, speedy and adequate remedy at law, and actions at law will not afford plaintiff plain, speedy or adequate remedy for said continuing acts of said defendants, and the remedy hereby sought is necessary to prevent a multiplicity of judicial proceedings.”

## XVIII.

“Plaintiff has not given affirmative consent or authority to defendants or any of them to operate a bar, tavern, cocktail lounge or any other business under the name of ‘Stork Club’

or 'The Stork Club' or to use insignia indicating and relating to the same."

XIX.

"Said plaintiff has not been guilty of any laches or delay with respect to the institution of legal action against said defendants, or their predecessor interest, to enjoin the use by said defendants, or said predecessor in interest, of plaintiff's trade-name 'Stork Club' or the aforesaid related insignia."

CONCLUSIONS OF LAW

14. Strike out defendants' Conclusions of Law.

15. Add the following Conclusions of Law:

"The Court has jurisdiction of the subject matter of this action and the parties hereto."

II.

"Plaintiff is the original owner of the trade-name 'The Stork Club' and the related insignia consisting of a stork standing on one leg and wearing a high hat and monocle."

III.

"Plaintiff is entitled to protection against infringement upon plaintiff's trade-name and related insignia, and against the invasion of plaintiff's property rights therein."

IV.

"Plaintiff is entitled to protection against trade practices which do or are likely to in-

fringe unfairly upon plaintiff's use of its trade-name and related insignia."

## V.

"Defendants, in adopting and using the name 'The Stork Club' and insignia similar to that adopted by the plaintiff, are guilty of an infringement upon plaintiff's trade-name and related insignia, and of an invasion of the plaintiff's property rights therein."

## VI.

"Defendants, in adopting and using the name 'The Stork Club' and insignia similar to that adopted by the plaintiff, are guilty of an unfair trade practice."

## VII.

"The plaintiff is entitled to an injunction restraining and enjoining the defendants, and agents, servants, employees and attorneys, and all persons in active concert or participation with defendants, from using in any way, shape or manner upon or in connection with any place of business conducted by or for them, including the place of business located at 200 Hyde Street, San Francisco, California, or in which they are, or any of them is or hereafter may become, interested, and in any and all advertising, printed, written or painted matter, directories and licenses of any description, plaintiff's trade-name 'The Stork Club,' or any name similar thereto, including the name 'Stork Club,' and from using in conjunction with any

such name or independently any insignia similar to or suggestive of that of plaintiff.”

VIII.

“The above injunctive relief is not barred by laches.”

These Proposed Amendments to Defendants’ Proposed Findings of Fact and Conclusions of Law are offered and filed pursuant to Rule 5(e) of the Rules of Practice of the District Court of the United States, for the Northern District of California (effective July 1st, 1944) and to the Rules of Civil Procedure for the District Courts of the United States, and are based upon all of the evidence, oral and documentary, records and files in said action.

Dated: San Francisco, California, this 12th day of April, 1947.

MALONE AND SULLIVAN,  
RAYMOND L. SULLIVAN,  
Attorneys for Plaintiff.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed April 12, 1947. [36]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The above-entitled action came on regularly for trial before the above-entitled Court, Hon. M. J. Roche presiding, Messrs. Malone & Sullivan appear-

ing as attorneys for plaintiff, and Albert Picard, Esq., appearing as attorney for the defendants, and evidence, oral and documentary, was thereupon introduced on behalf of the plaintiff and defendants, and the matter was submitted to the Court for consideration and decision, and the Court being now fully advised in the premises now makes its findings of fact and conclusions of law, as follows:

### Findings of Fact

#### I.

This Court has jurisdiction of this action. The entire matter in controversy herein is more than the sum of three [37] thousand (3,000) dollars, exclusive of interest and costs.

#### II.

The plaintiff now is, and continuously since on or about August 15, 1934, has been operating, maintaining and conducting a large restaurant, cafe and night club business under the name "The Stork Club" at No. 3 East 53rd Street, New York City, New York, supplying therein and thereat expensive food, beverage, music and dancing facilities; said plaintiff upon the commencement of said business adopted for the same the trade-name "The Stork Club" and continuously thereafter and since on or about August 15, 1934, has used said trade-name in the conduct and operation of its aforesaid business, and has been and now is the owner of said trade-name "The Stork Club" in the State of New York, but has no right thereto in the State of California.

## III.

The plaintiff has expended considerable effort and large sums of money, aggregating in excess of five hundred thousand (500,000) dollars in the last eleven years, advertising in the State of New York; plaintiff employs approximately two hundred forty (240) people to provide several hundred customers each day between 11:30 a.m. and 4:00 a.m. with relatively high-priced and high quality food, beverages and entertainment which service yields an average annual gross income of over one million (1,000,000) dollars; the plaintiff's trade name "The Stork Club" has no value in the State of California.

## IV.

The defendants on or about April 6, 1945, began the operation of, and continuously since said date have been operating and conducting a small bar, tavern and cocktail lounge at No. 200 Hyde Street, in the City and County of San Francisco, State of California, under the name of "Stork Club" and at all of said times have been and now are using said name in the conduct of said [38] business; that no damage or detriment has been caused to said plaintiff thereby but the gross business of plaintiff has increased over two hundred thousand (200,000) dollars per year for several years last past.

## V.

By reason of the aforesaid acts of said defendants no damage has been or will be caused to the trade name, the good-will or the reputation or

standing of plaintiff or to the trade or business or good-will of plaintiff or the extension or development of its patronage throughout the United States of America or within the State of California or the City and County of San Francisco or at all; that plaintiff does not have and is not interested in any place of business within the State of California; that the use of said name "Stork Club" by the defendants does not cause any deception to any person whomsoever and does not cause any person to believe that it is "The Stork Club" operated by the plaintiff or that the plaintiff is in any manner interested in the said small tavern operated by the defendants.

#### VI.

Plaintiff has not caused a demand to be made upon said defendants that said defendants desist and discontinue the use of said trade name "Stork Club."

#### VII.

None of the acts and things done or caused to be done by said defendants or any of them has been to the injury or damage of plaintiff in any sum.

#### VIII.

During all of said time herein mentioned and continuously since on or about August 15, 1934, the plaintiff has used in conjunction with its use of the name, "The Stork Club," in its business, an insignia consisting of a stork standing on one leg and wearing a high hat and monocle. [39]



## IX.

By reason of the manner in which plaintiff has been conducting and operating "The Stork Club" as aforesaid, and by reason of the large sums of money expended by plaintiff in advertising and otherwise promoting its said business in the State of New York, the said plaintiff's "The Stork Club" has acquired a widespread and valuable reputation, and has commanded and now commands patronage from visitors to New York from throughout the United States; during all of the time said business has been conducted, the same has been, and now is patronized by visitors to New York both from in and about the City of New York and from the United States at large, including the metropolitan area of San Francisco, California; during all of said time, said business has been and now is patronized by persons of prominence in social, literary, artistic, professional, commercial, official and cinematic circles; on occasions said place of business during all of said time has been, and now is, referred to and written of in various newspapers, magazines and periodicals of local and national circulation; that by reason of the foregoing, the said business of plaintiff conducted and operated under the name "The Stork Club" and with the aforesaid insignia used in conjunction therewith, became and now is known to many persons in and about the City and County of San Francisco, State of California, as a club in New York.

## X.

The defendants at all of said times have displayed and maintained, and now are displaying and maintaining a sign affixed to the exterior of said place of business and containing the words "Stork Club," but do not display or maintain any insignia similar to the aforementioned insignia of plaintiff, and consisting of a stork standing on one leg and wearing a high hat; said defendants at all of said times have very slightly advertised their said [40] business in the City and County of San Francisco under the name "Stork Club" and have only caused said business to be listed in the San Francisco telephone directory under said name and reported their business to governmental departments of the State of California and of the City and County of San Francisco as the "Stork Club," and have obtained municipal and State licenses in and under said name; defendants have not caused the aforesaid name "Stork Club" or related insignia, as hereinabove described, to be used in or about the interior of said defendants' place of business or to be advertised or publicized to patrons therein; defendants have never profited and now are not profiting from the aforesaid name or related insignia of plaintiff's business, or at all.

## XI.

No confusion has arisen in the minds of the public or will arise or exist and none of the public will be deceived or misled into believing that defendants' business is connected or associated with,

or under the supervision of plaintiff; the trade-name, the good-will and the reputation and standing of plaintiff have not been and will not be in any way damaged by defendants and the trade and business and good-will of plaintiff and the extension and development of its patronage throughout the United States of America have not been and will not be damaged or interfered with, but have steadily and materially increased yearly.

### XII.

Plaintiff has not heretofore caused a demand to be made upon said defendants that said defendants desist or discontinue the use of said trade name, "Stork Club" or the aforesaid related insignia.

### XIII.

The name "Stork Club" has been used at said premises at 200 Hyde Street by the defendants herein and by the predecessor [41] in interest of said defendants who sold said business to said defendants at all times since the 1st day of March, 1943, and that the said name was publicly and openly displayed on said premises, and that the said plaintiff has been guilty of laches and delay in taking no action of any kind or character whatsoever against said defendants or the predecessor in interest of said defendants for the period of three (3) years from the first use of said name in said premises.

### Conclusions of Law

As conclusions of law from the foregoing facts the Court finds that judgment should be entered

that plaintiff take nothing by this action as against defendants or any of them, that an injunction be denied to plaintiff; and that said defendants have judgment against said plaintiff for their costs of suit incurred herein.

Let Judgment be entered in accordance herewith.

Dated: April 28th, 1947.

MICHAEL J. ROCHE,  
United States District Judge.

A true copy of the foregoing delivered to the office of Malone & Sullivan, Room 849 Mills Bldg., Attorneys for Plaintiff, on April 8th, 1947.

O. R. CORNISH.

[Endorsed]: Filed April 28, 1947. [42]

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In the District Court of the United States, Northern  
District of California, Southern Division

No. 25707R

STORK RESTAURANT, INC., a Corporation,  
Plaintiff,

vs.

N. SAHATI, ZAFER SAHATI, SALLY SA-  
HATI, EDMOND SAHATI, ALFRED AN-  
SARA, A. E. SYUFY, FIRST DOE, SEC-  
OND DOE, THIRD DOE, FOURTH DOE,  
ROE AND ROE, a Co-partnership, BLACK  
COMPANY, a Corporation,

Defendants.

JUDGMENT

The above-entitled action came on regularly for trial before the above-entitled Court, Hon. M. J. Roche presiding, Messrs. Malone & Sullivan appearing as attorneys for plaintiff and Albert Picard, Esq., appearing as attorney for the defendants, and no other person appearing either in person or by counsel, and evidence, oral and documentary, was thereupon introduced on behalf of the plaintiff and defendants, and the matter was submitted to the Court for consideration and decision, and the Court having made and filed its findings, and good cause appearing therefor;

It Is Ordered, Adjudged and Decreed that the plaintiff take nothing by this action as against the defendants, or any of them, and that an injunction is hereby denied to plaintiff, and that the defendants N. Sahati, Zafer Sahati, Sally Sahati, Edmond [43] Sahati, Alfred Ansara and A. E. Syufy do have and recover from said plaintiff their costs of suit incurred herein amounting to the sum of..... dollars.

Dated: April 28th, 1947.

MICHAEL J. ROCHE,  
United States District Judge.

A true copy of the foregoing delivered to the office of Malone & Sullivan, Room 849, Mills Bldg., attorneys for Plaintiff, April 8th, 1947.

O. R. CORNISH.

[Endorsed]: Filed and Entered April 28, 1947.

[Title of District Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT

To the plaintiff above-named and to Messrs. Malone & Sullivan, its attorneys:

You Will Please Take Notice that the above-entitled Court has this day entered its judgment in favor of the defendants and against the plaintiff.

Dated: April 28, 1947.

ALBERT PICARD,

Attorney for Defendants N. Sahati, Zafer Sahati,  
Sally Sahati, Edmond Sahati, Alfred Ansara  
and A. E. Syufy.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed April 30, 1947. [45]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Stork Restaurant, Inc., a corporation, plaintiff above-named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment heretofore filed and entered in this action on April 28, 1947.

Dated: May 16, 1947.

MALONE AND SULLIVAN,

/s/ WILLIAM M. MALONE,

/s/ RAYMOND L. SULLIVAN,

Attorneys for Appellant, Stork Restaurant, Inc.,  
a Corporation.

[Endorsed]: Filed May 16, 1947. [46]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF  
CONTENTS OF RECORD ON APPEAL

Comes now Stork Restaurant, Inc., a corporation, plaintiff above-named, and having filed herein its Notice of Appeal to the Circuit Court of Appeals for the Ninth Circuit, hereby designates the complete record and all the proceedings and evidence in the above-entitled action as the contents of its record on appeal, including, but not in limitation of the foregoing all pleadings, the findings of fact and conclusions of law, plaintiff's proposed amendments to defendants' proposed findings of fact and conclusions of law, the judgment, all of the evidence received at the trial of said action, including the testimony of the witnesses [47] and all exhibits, and a transcript of the proceedings on the hearing of plaintiff's proposed amendments to defendants' proposed findings of fact and conclusions of law.

Dated: May 16th, 1947.

MALONE AND SULLIVAN,

/s/ WILLIAM M. MALONE,

/s/ RAYMOND L. SULLIVAN,

Attorneys for Appellant, Stork Restaurant, Inc., a Corporation.

[Endorsed]: Filed May 16, 1947. [48]

[Title of District Court and Cause.]

ORDER FOR TRANSPORTATION OF ORIGINAL EXHIBITS TO CIRCUIT COURT OF APPEALS

It appearing to the Court and the Court being of the opinion that, an appeal having been taken in this cause to the Circuit Court of Appeals, the original exhibits filed in this action should be inspected by the Appellate Court and should be sent to the Appellate Court in lieu of copies,

Now, Therefore, upon application of counsel for plaintiff above named,

It Is Ordered that the Clerk of this Court forward to the Circuit Court of Appeals, by means of transportation and in the manner usual and customary for the safekeeping, transportation and return thereof, all of the original exhibits offered, marked and [49] received in evidence upon the trial and hearing of said action, and the whole thereof.

Dated: This 19th day of May, 1947.

MICHAEL J. ROCHE,  
United States District Judge.

[Endorsed]: Filed May 19, 1947. [50]



District Court of the United States,  
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 50 pages, numbered from 1 to 50, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of Stork Restaurant, Inc., a corporation, Plaintiff, vs. N. Sahati, et als., Defendants, No. 25707 R, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$5.90 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 16th day of June, A.D. 1947.

[Seal]

C. W. CALBREATH,  
Clerk.

/s/ M. E. VAN BUREN,  
Deputy Clerk. [51]

In the Southern Division of the United States  
District Court for the Northern District of  
California

No. 25707-R

STORK RESTAURANT, INC., a Corporation,  
Plaintiff,

vs.

N. SAHATI, ZAFER SAHATI, SALLY SA-  
HATI, EDMOND SAHATI, ALFRED AN-  
SARA and A. E. SYUFY,

Defendants.

REPORTER'S TRANSCRIPT

Tuesday, April 1, 1947

Appearances:

For the Plaintiff: Raymond L. Sullivan, Esq.

For the Defendants: Albert Picard, Esq.

The Clerk: Stork Restaurant v. N. Sahati, et al.

Mr. Sullivan: Ready.

Mr. Picard: Ready.

Mr. Sullivan: May the record show, if your Honor please, that I am presenting to the Clerk the deposition of Nicholas Michael Sahati which has been taken in this case of Stork Restaurant, Inc., a corporation, v. N. Sahati et al., No. 25707-R, and at the same time the deposition of George A. Smith which has been taken in that case, bearing the same number.

The Court: The record may so show.

Mr. Sullivan: May it please your Honor, this

action is brought by Stork Restaurant to enjoin the defendants, N. Sahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara and A. E. Syufy, and their agents, their servants, employees and attorneys and all persons in active concert or participation with defendant from using in any way, shape or manner the name "The Stork Club" or the insignia of the Stork Club which is described in the complaint filed herein and which consists of a stork standing on one leg, and wearing a high hat and monocle.

The action, if your Honor please, is laid in two counts. The first count charges an infringement and invasion of a property right, exclusive right in the name "The Stork Club," and the second count of the complain charges that these defendants have been and now are engaged in unfair trade practice, a count which is predicated upon unfair competition. [2\*]

I do not know what the disposition of the Court is with respect to an opening statement, but I may in the interest of time say this briefly to your Honor, that the Plaintiff, Stork Restaurant, Inc., and the evidence will show this, if your Honor please, has been in existence for several years, and since August 15, 1934, it has been using the name "The Stork Club," and it has been using the insignia which I have described to your Honor; in connection with its restaurant, cafe and night club business, it is known as "The Stork Club." It is

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\*Page numbering appearing at top of page of original Reporter's Transcript.

located at No. 3 East 53rd Street, New York City, New York.

The evidence will show that the Plaintiff has expended considerable effort in the enhancement and in the promotion of its name and its business and its insignia. We will show to your Honor, for instance, that during the period of approximately 11 years, from 1935 to 1945, the sum of \$727,000 was spent in connection with the promotion of its business, the advertisement of its business, the promotion of its name and its insignia, and that it has developed a business, the gross income of which during the same period of time, namely, the 11-year period from 1935 to 1945, aggregates \$9,600,000 approximately.

We will show that because of its promotion that the Stork Club became, as it is commonly called, probably the nation's most famous place of nighttime amusement, or the most famous night club in the United States, and that its name became known to all of the people in the United States and became popularized [3] and known to people throughout the United States and in San Francisco and California.

The evidence will show that as a result the Stork Club acquired a valuable and widespread reputation and it has enjoyed continuously and still does enjoy an extensive patronage from all over the United States, including this area, and its particular patrons are persons of great prominence in the social world, professional and commercial officials, and it has been mentioned many, many times in

various media of advertising such as newspapers, magazines and periodicals and even in motion pictures, and that as a result of this, this name became of a widespread fame and reputation.

If the Court please, the evidence will show that the defendant on April 6, 1945, which was a time approximately nine years after this business had been started by the plaintiff, and after the plaintiff's business had acquired nationwide fame and reputation, with the purpose in mind to benefit and appropriate to himself the trade name and the fame and the good will and extensive reputation of the plaintiff, of the plaintiff's place of business, opened an establishment in this city and called it the Stork Club and they have done business under that name, they have conducted advertising under that name, they have used in a certain way the insignia which I have mentioned to your Honor.

The evidence will show that because of this two things have happened: the defendant has committed an invasion or [4] infringement upon the vested right of the plaintiff, namely, their exclusive right to this name in their business, which is a valuable property right and asset of the plaintiff's business; and secondly, by virtue of the same evidence which will be shown to your Honor, that the defendants have engaged in unfair trade practice.

After we have shown these facts to your Honor, which will be in more detail than I have outlined to your Honor in the interest of time, we will respectfully ask your Honor for an injunction against the

defendants in the manner prayed for in the complaint.

The Court: I will hear from counsel for the defendants.

Mr. Picard: If your Honor please, primarily the statement that the defendant Sahati opened his place of business and used this name is erroneous. They purchased the business with the name which had been used for several years before they purchased the business, and they simply continued to use that name. They did not use the insignia which counsel has mentioned. They, however, used the name Stork Club.

The contentions of the plaintiff here are without merit, particularly for two reasons, if your Honor please. There is a distance of 3,000 miles between the place of business operated by the plaintiff and the place of business operated by the defendants, and by no stretch of the imagination could it be claimed that the place of business used by the defendants is in [5] competition with the plaintiff or in any manner injures the plaintiff.

Furthermore, if your Honor please, from the elaborate and vast amount which has been stated here by counsel, the \$9,000,000 of gross receipts and the \$700,000 and some odd which has been spent in advertising, it is obvious that it is a fairly large and elaborate place of business, and what is commonly called a night club. The place of business conducted by defendants is a comparatively small bar and restaurant. It is at 200 Hyde Street in San Francisco. It is a comparatively small place

of business and is not in any manner in competition with plaintiff in this case.

There is no entertainment. The place is just a comparatively small place and seats a comparatively small number of persons and is mainly operated as a bar.

We submit, if your Honor please, that the complaint does not show any invasion of the plaintiff's name. The stork is the name of a bird. There is not unfair competition and there is nothing here, if your Honor please, in which the plaintiff could show any injury or any reason why the defendants should be enjoined from using the name.

The Court: We will take a brief recess.

(Recess.)

The Court: Proceed with the case.

Mr. Sullivan: May it please the Court, at this time [6] plaintiff offers in evidence and introduces as the testimony of the first witness in this case, the testimony of John J. Farrell which was taken pursuant to notice in New York City beginning on October 2, 1946 at 2:00 p. m., before Louis G. Schwartz, a Notary Public.

The title page of the deposition, if your Honor please, shows that Malone & Sullivan, Esquires, 849 Mills Building, San Francisco, 4, California; and Goldwater & Flynn, Esquires, Monroe Goldwater, Esq., and Louis R. Colman, Esq., appeared as attorneys for the plaintiff Their address is 60 East 42nd Street, New York, N. Y.

Frank, Weil & Strouse, Esquires, by Samuel F.

Frank, Esq., 8 West 40th Street, New York, N. Y., appeared as attorney for the defendants.

The plaintiff, the Stork Restaurant, a corporation, at this time offers this testimony, by offering to read into evidence the deposition of the witness John J. Farrell. I do not think that it will be necessary, will it, Mr. Picard, to read the preliminary statement on Page 2?

Mr. Picard: No, that is not necessary.

Mr. Sullivan: I will begin, if your Honor please, with the first question:

#### DEPOSITION OF JOHN J. FARRELL

By the Notary:

“Q. Please state your name and address.

“A. John J. Farrell, 550 Linden Avenue, Teaneck New Jersey. [7]

#### “Direct Examination

“By Mr. Goldwater:

“Q. Mr. Farrell, are you connected with the Stork Restaurant, Inc., the plaintiff in this cause?

“A. Yes, I am.

“Q. What office do you hold in that company?

“A. I am president of Stork Restaurant, Inc., and the auditor.

“Q. How long have you been the auditor for Stork Restaurant, Inc.?      A. Since 1935.

“Q. As such auditor, are the books of the corporation under your direct supervision?

“A. Yes, they are.

“Q. Are all entries and records made of the



(Deposition of John J. Farrell.)

business of the Stork Restaurant, Inc. in books which are regularly kept?      A. Yes.

“Q. What are the books in general, and describe them as to name?

“A. General ledger, purchase journal, petty cash book, cash receipts book, cash disbursements book and earnings book.

“Q. Are the books and records containing such entries as to which you will be asked to testify, in accordance with the information which I previously furnished you, here present at this hearing? [8]

“A. The general ledgers are.

“Q. What do those general ledgers contain; what kind of record and entry?

“The general ledgers contain the total of the various books of original entry.

“Q. Where are the books of original entry?

“A. They are at the Stork Restaurant, Inc., and some are in the warehouse.

“Q. If any of these books are required for examination by defendants' counsel, can they and will they be produced here?      A. Yes.

“Q. How long did you say you have been associated with the Stork Restaurant as its auditor?

“A. Since 1935.

“Q. You have been in charge of the books and records of the company since that date?

“A. Yes, sir.

“Q. Are all of the entries in these books and records in your own handwriting?

“A. No, they are not all in my handwriting, but they have been made under my supervision.

(Deposition of John J. Farrell.)

“Q. Are you thoroughly familiar with them?

“A. Yes, I am.

“Q. In accordance with the regular customary practice of accounting, are those books and records a correct reflection of [9] the business conducted by the Stork Restaurant during that period?

“A. They are.

“Q. Let me ask you, first, whether correct records and entries are kept in the books, which you have described, for advertising expenses of all kinds during the period you described?

“A. They are.

“Q. Have you examined those books and records for the purpose of determining the approximate total amount which has been spent by the Stork Restaurant, Inc. during the period from 1935 through the year 1945? A. Yes, I have.

“Q. Will you tell us, first, what the total sum is, which has been spent for that purpose, during that period? A. \$727,582.59.

“Q. Are your work sheets, upon which you have entered these totals and calculated the aggregate amount, present here subject to examination?

“A. They are.

“Q. Will you break down that total with respect to the kinds of items which enter into this advertising expense?

“A. You mean, year by year?

“Q. First, give us in general the headings of the kinds of items.

“They would consist of gifts and matches and

(Deposition of John J. Farrell.)

jewelry of [10] all sorts of items that we have given to our patrons, and also some of it is free meals.

“Q. That is, some of it comprises those cases in which, as a matter of advertising or good will, patrons of the Stork Club are treated as guests of the Stork Club?

“A. The management sometimes acts as host to newspaper people and celebrities.

“Q. Celebrities in what fields of activity?

“A. In the amusement field, industrial, theatrical.

“Q. Does that include, also, persons who are prominent in the social world?

“A. Yes, people who are mentioned socially all through the newspapers and magazines.

“Q. Has it been the policy of the Stork Restaurant throughout these years, on frequent occasions, to make such persons the guests of the Stork Club?

“A. Yes.

“Q. Have you separated the amounts which which have been expended by the Stork Club for these various purposes, so that you can give us from your collation of the items the total number of items with the description of the character of the items, and also the total amount spent for each of the items?

“A. Yes. I have a schedule here of the number of items and the amount expended for them.

“Q. Have you taken the figures from the account books and [11] records of the Stork Restaurant, Inc., which you described?

(Deposition of John J. Farrell.)

“A. I have.

“Q. Are you able to break down those items for each of the years from 1935 through the year 1945? A. Yes.

“Q. Will you tell me, now, what the fiscal year of the Stork Restaurant, Inc. is?

“A. December 1st to November 30th.

“Q. Let us take the year 1935. Would that be the year ending December 1st or November 30, 1936? Is that the year you would call ‘1935’ or is that the year you would call ‘1936’?

“The year ending November 30, 1935 we call ‘1935.’

“Q. Will you give us, for the year 1935, the total amount spent for the purposes which you have described and such breakdown into various classifications as you can furnish?

“Not for 1935; I cannot give it to you; and I cannot for 1936.

“Q. You have only the totals for those years?

“A. Yes.

“Q. Would you state what the totals are?

“A. \$84,930.38 for 1935.

“Q. That is the year ending November 30, 1935?

“A. Yes, and for the year ending November 30, 1936, \$106,197.89.

“Q. Can you break down into separate groups the total [12] amount for each of those years?

“A. Yes.

“Q. Into two general groups?

“A. Yes, into two general groups.

(Deposition of John J. Farrell.)

“Q. What are those groups, and the amounts of each?

“A. House advertising, \$51,794.58, and cash advertising, \$33,135.80, for the year ending November 30, 1935; and for the year ending November 30, 1936, house advertising is \$58,715.02, and the cash advertising \$47,482.87.

“Q. Will you tell us what items in general are comprised under the heading of ‘house advertising’?

“A. On the item ‘house advertising’ under that there were included food and liquor that was given away at that time.

“Q. You mean that would be the total of the items at the regular list price of the Stork Club for those persons who were entertained as a matter of policy at the Stork Club during that period?

“A. During that period, that is, for the first two years that we were open, and that was our policy at that time.

“Q. Will you tell us what items are comprised under the heading of ‘cash advertising’?

“A. Gifts to customers, flowers, post-cards, postage—any number of things that were given away at different times throughout those years.

“Q. Postage was not given away, of course. Describe what [13] the postage was used for.

“A. Postage was used to take care of our mailing list.

“Q. Mailing list of patrons or prospective patrons?  
A. Mailing list of patrons.

(Deposition of John J. Farrell.)

“Q. What names were on those lists; how were those lists compiled?

“A. Those lists were compiled from our record of mailing list which is taken from our guests; names and addresses of our guests who had patronized the club.

“Q. Was the book known as the Social Register also used in your mailing list?

“A. Yes, the Social Registers were also used.

“Q. What kind of material was mailed to those persons?

“A. Postal cards and magazine articles. We did get out a few magazines.

“Q. What do the postal cards show; what was portrayed on them?

“The new Cub Room that we opened, the new Blessed Event Room, the new Tap Room and, of course, different announcements as to cocktails, cocktail hours.

“Q. The Cub Room was not opened as early as this period in 1935 and 1936?           A. No.

“Q. Nor the Blessed Event Room at that time?

“A. No. [14]

“Q. Were there photographs, reproductions of photographs of persons in various parts of the Stork Club?           A. Yes.

“Q. By the way, I did not ask you by what name is the establishment operated by the Stork Restaurant, Inc., commonly known in New York?

“The Stork Club.

“Q. Is it known by that name outside of the City of New York as well?

(Deposition of John J. Farrell.)

“A. Yes, it is known all over the world as the Stork Club.”

Mr. Picard: Just a minute. I move that that be stricken on the ground it is pure hearsay. This witness is in no position to know whether anything is known all over the world or not.

Mr. Sullivan: I resist the motion, if your Honor please, on the ground that the witness is president of the Stork Restaurant, Inc. and the auditor. He has had personal knowledge of the activities of the Stork Restaurant since 1935 and he is in a position from dealing with the various patrons who have come from all over the world to indicate what is the general fame and reputation of this place.

The Court: It is calling for the conclusion of the witness. However, I will allow it to go subject to your motion to strike over your objection.

Mr. Sullivan (continuing): “Q. Has it always been known [15] by that name since the opening of the establishment? A. Yes.

“Q. Will you give us the address at which the business is conducted?

“A. At 3 East 53rd Street, New York City. That was at the address at the time the business was started there, at the time the Stork Restaurant, Inc., went into business. Since that time the address has been 3 East 53rd Street.

“Q. Have additional premises been added to the operations adjoining 3 East 53rd Street since that time?

“A. Yes, there has, and we have taken over part of No. 1 East 53rd Street.

(Deposition of John J. Farrell.)

“Q. What part of 3 East 53rd Street was occupied by the Stork Restaurant for its business since 1935?

“A. 3 East 53rd Street, the first floor and basement and, of course, there were offices upstairs.

“Q. Do I understand that the Stork Restaurant used the first floor, that is, the street floor, for the entertainment of its patrons? A. Yes.

“Q. And the basement was used for what purpose?

“A. For kitchen and storage of supplies.

“Q. And the first floor above the street floor was used for what purpose?

“Office and dressing rooms. [16]

“Q. That has been so since 1935, has it?

“A. Yes.

“Q. When it acquired No. 1 East 53rd Street for its use, what portion of those premises was used by the Stork Restaurant, Inc.?

“A. The first floor and mezzanine and part of the basement.

“Q. When you say “first floor” in this instance, do you refer to the first floor above the street?

“A. The ground floor.

“Q. It would be the ground floor, mezzanine and part of the basement? A. Yes.

“Q. What part of those premises was used for entertainment of patrons?

“A. The ground floor.

“Q. Is there an opening between No. 1 East 53rd Street and No. 3 East 53rd Street, and has there



(Deposition of John J. Farrell.)

been such opening since No. 1 East 53rd Street was acquired for use?           A. There has.

“Q. Is the mezzanine in No. 1 East 53rd Street also used for the entertainment of patrons?

“A. Yes. It is known as the Blessed Event Room.

“Q. Would you tell us now the total number of persons who may be seated in the various portions of the premises, that is, in the public group, seated in accordance with the appropriate [17] or applicable department regulations of the City of New York?           A. The total is 438.

“Q. Can you break that down into the various portions of the premises?

“A. Yes. The main room, 300 persons.

“Q. The main room is at which address?

“A. 3 East 53rd Street; the Cub Room, which is at 1 East 53rd Street, 74 persons; the Loners' Room, which is also at 1 East 53rd Street, 24 persons; and the Blessed Event Room at 1 East 53rd Street, 40 persons.

“Q. That is the maximum seating capacity as permitted by the ordinances and regulations of the City of New York?

“A. Yes, that is correct.

“Q. Now, Mr. Farrell, you gave us the two general headings under which you could divide this publicity and advertising expense for the years 1935 and 1936. For the years 1937 to 1945, inclusive, are you able to break these items down into more detailed headings?           A. Yes.

(Deposition of John J. Farrell.)

“Q. Have you with you the work sheets upon which you have entered the totals which you computed on each of the items of expenditures for those purposes during those years showing the total number of items of each character, and the total amount expended for each character?

“A. I have the total amount of each character and the [18] total amount expended. There are some items, of course, which are not included in here, such as flowers and other gifts that I don't have the bills for, and didn't come across the bills, but I have the majority of them.

“Q. As to each of the items concerning which you are now able to give us the descriptive title and the total amount expended in each of the years, have you present here the bills supporting your statement with respect to the cost and the character of the items?      A. I have.

“Q. Those are receipted bills showing payments for each of these items?

“A. They are not receipted bills.

“Q. Do you know that all of these bills were paid of your own knowledge?      A. I do.

“Q. Is it one of your duties to retain the record of the bills paid, and also to prepare the check for payment of each of these items?

“A. It is my duty to record the check and cash disbursements book showing payment of the items.

“Q. Do you know that all of these checks were cleared through the regular bank channels and re-

(Deposition of John J. Farrell.)

turned to the Stork Restaurant, Inc., by its bank?

“A. Yes, I do. [19]

“Q. Are those two yellow sheets, which you now hand me, Mr. Farrell, the statement of the records, the total of each of the items of expenditure showing the character, the total number of items and the total amount paid therefor, from the years 1937 through to year ending November 30, 1945, inclusive?

“A. They are the totals for the amount of bills I have brought down.

“Q. You have the bills for each of these items?

“A. Yes.

“Mr. Goldwater: I ask that these be marked for identification.

“(Two large yellow sheets thereupon marked respectively Plaintiffff’s Exhibits 1 and 1-A for Identification, 10/2/46.)”

At this time, if your Honor please, plaintiff offers in evidence two yellow sheets which bear the mark, Plaintiff’s Exhibit 1 for identification, with the date October 2, 1946, and Plaintiff’s Exhibit 1-A for identification, which bears the date October 2, 1946, and each of them having what purports to be the reporter’s signature identifying the exhibit marked. I offer each of these in evidence and ask that they be duly admitted and marked with the same numbers, namely, Plaintiff’s Exhibit in evidence 1 and Plaintiff’s Exhibit in evidence 1-A, as they have been in the deposition.

(Deposition of John J. Farrell.)

The Court: They may be admitted and marked.

(Two large yellow sheets were marked Plaintiff's Exhibit 1 [20] and Plaintiff's Exhibit 1-A.)

Mr. Sullivan: Now resuming the reading of the deposition:

"Mr. Goldwater: I offer, for the inspection of counsel for defendants, files containing bills supporting the payments for each of the purposes and to each of the payees, indicated on Plaintiff's Exhibits 1 and 1-A for identification.

"Mr. Frank: At the present time I do not want to examine the records, but you have them here and at any time a question is raised about them, you will give me an opportunity to verify them.

"Mr. Goldwater: I offer for identification the files containing the bills referred to by the witness from which he states he made up the total of items and amounts expended for the various purposes described, as set forth in Plaintiff's Exhibits 1 and 1-A for identification.

"(Said files, referred to, comprising a batch of papers, thereupon marked Plaintiff's Exhibit 2 for identification, 10/2/46.)"

I will show Mr. Picard Plaintiff's Exhibit 2 for identification, which consists of 86 folders of bills, beginning with the mark of Exhibit 2 for identification. Folders of bills beginning with the mark of Exhibit 2 for identification and running completely

(Deposition of John J. Farrell.)

through the alphabet, consecutively from 2-A to 2-HHHH.

Mr. Picard: I think I will follow the course followed by [21] my associate, Mr. Frank, and say I will examine them at a later time.

The Court: They may be admitted and marked.

Mr. Sullivan: At this time, if your Honor please, I offer these files which consist of 86 folders of bills that I have mentioned to your Honor as Plaintiff's Exhibit next in order and ask that they be marked as one exhibit, namely, from Plaintiff's Exhibit 2-A to 2-HHHH, using in each instance upon each exhibit for identification the number of the exhibit in evidence.

The Court: They may be admitted and marked.

(The files containing bills are marked Plaintiff's Exhibit 2-A to 2-HHHH.)

Mr. Picard: I will stipulate that the Clerk may initial the top sheet and that all the rest are deemed as being marked.

Mr. Sullivan (reading):

"Mr. Goldwater: These supporting bills will be available for inspection by counsel for defendants at his request at any time.

"Q. Now, Mr. Farrell, so that the record will be clear, apart from the exhibit, will you read into the record the total number of items and total expended for each item for the period 1937 to 1945, inclusive?

"A. There were 260 clip watches—

(Deposition of John J. Farrell.)

“Mr. Frank (to witness): The totals you are going to give comprise these two general groups you gave us before, one for [22] gifts, and the other for cash expenditures, and you will subdivide those. Are there other items besides the ones you gave?”

“The Witness: These items are for cash expended.

“Mr. Frank: That is one of the items?”

“The Witness: Yes.

“Mr. Frank: These figures give the details as to these two general groups?”

“Mr. Goldwater: As to only one of the groups.

“The Witness: The cash.

“Mr. Frank: I want to know what they are.

“By Mr. Goldwater:

“Q. This is the breakdown which you are able to give in detail for the period from 1937 to 1945, inclusive? A. That is correct.

“Q. It does not include the figures which you gave for 1935 and 1936 under the two general headings? A. No, it does not.

“Q. Now, will you give us those?”

“A. 260 clip watches, \$2640; 4878 key tags, \$802.43; 400 radios, \$4840; 15,700 calendars, \$2305.20; 3975 decks of playing cards, \$1012.99; 160 fountain pens, \$2153.50; 42 alligator bags, \$2612.29; 17,624 lipsticks, \$5827.80; 2108 compacts, \$4216; 86,000 paper cigarette holders, \$818.75; 221,500 “Stork Talk”, \$6163.02; 658,350 postal cards, \$3051.80—that item does not comprise the entire amount. Also, 4503 ties and [23] scarfs,

(Deposition of John J. Farrell.)

\$22,256.01; 2716 auto plates, \$911.30; 22,229 bottles of perfume, \$102,549.54; 639,923 lucky coins, \$11,693.50; 6,983,750 packages of book matches, \$18,095.42; 26,608 articles of jewelry amounting to \$9,969.36.

“Q. Under the various categories, that you have just described, Mr. Farrell, are there any one or more of those figures which do not cover the full period of 1937 to 1945?

“A. The postal cards do not.

“Q. How many years, and what was the total of postal cards?

“A. 658,350 represented the period of two years, but I would say we did average about 200,000 postal cards a year.

“Q. Are you sure there was a minimum of 200,000 in each of the other years?

“A. There was a minimum of at least 200,000 in each of the other years.

“Q. Which of the two years have you gotten the accurate figure on which you testified?

“A. They are both 1940, as to these items.

“Q. You mean, that is the total used in one year? A. In one year, yes.

“Q. Are you able to say that there was a minimum of 200,000 used in each of the other years?

“A. Yes.

“Q. That is, between 1937 and 1945?

“A. Yes, that is correct. [24]

“Q. Now, Mr. Farrell, I show you a circular metal piece with an insignia on it, and the name

(Deposition of John J. Farrell.)

“Stork Club,” and ask you whether that is the form of the insignia and the form of the type of letters for the name, which has been commonly used by the Stork Restaurant for the advertising and publicity of its club known as the Stork Club since 1935?       A. It is.

“Mr. Goldwater: I ask that be marked for identification.

“(Item, being circular metal piece referred to, thereupon marked Plaintiff’s Exhibit 3 for identification, 10/2/46.)”

Now I will show Mr. Picard Plaintiff’s Exhibit 3 for identification (handing it).

At this time, if your Honor please, we offer in evidence Plaintiff’s Exhibit 3 for identification which bears the Reporter’s signature and the date October 2, 1946, and ask that it be duly admitted and marked Plaintiff’s Exhibit No. 3.

The Court: It may be admitted and marked.

(The circular metal piece is marked Plaintiff’s Exhibit 3.)

Mr. Sullivan (reading):

“Q. What is the article which has just been marked as Plaintiff’s Exhibit 3 for identification?

“A. Auto plate.”

May I interrupt at this time and address the Court so that the record will be clear. I think it is probably clear that I have brought to the Court today all of the exhibits for [25] identification



(Deposition of John J. Farrell.)

which were introduced at the deposition. They were sent to me by counsel in New York.

I will resume the reading of the deposition.

“Q. Is that the item to which you have testified that 2716 such items, at a total cost of \$911.30, were purchased?      A. It is.

“Q. Do you know what was done with this?

“A. Yes. They were circulated among our guests to be put on the back of their cars over their license number.

“Q. This insignia of the Stork standing upon one leg with a silk hat and monocle with the name on it also bears the letters “NYC” and I ask you whether the insignia, as commonly used by the Stork Club on its various articles described as gifts for advertising and publicity purposes, always used the letters “NYC”?      A. Yes.

“Q. On all of them, did you always use “NYC”?

“A. On most of our gifts—most of our advertising matter, such as matches and name plates.

“Q. On many of your gifts, such as the stork pins and the powder cases and other things, did the address appear on them, or the city?

“A. On the stork pins, you mean?

“Q. Yes.      A. No. [26]

“Q. We will see, as we go along, on which ones it did appear and on which it did not. What is the first item on the list which you just read into the record?      A. Clip watches.

“Q. Have you any clip watches left which can be identified?      A. No, I have not.

(Deposition of John J. Farrell.)

“Q. Could you describe them, generally?”

“A. Yes. It was a watch similar to a lady’s clip pin that they pin on their dress.

“Q. That is a small watch?”

“A. A small watch.

“Q. For ladies’ use?”

“A. Yes, and they also had the stork emblem.

“Q. The emblem you describe what I have referred to as an insignia on Plaintiff’s Exhibit 3 for identification?       A. That is correct.

“Q. What is your next item?”

“A. Key tags.

“Q. I show you this article and ask you if that is a correct sample, an identical sample, of the key tags of which you have said 4,878 items, at a cost of \$802.43, were purchased?”

“A. That is correct.

“Mr. Goldwater: I ask that be marked for identification.

“(Key tag, referred to, thereupon marked Plaintiff’s Exhibit 4 for identification, 10/2/46.)” [27]

I am now showing Mr. Picard Plaintiff’s Exhibit No. 4 for identification (handing).

I offer Plaintiff’s Exhibit No. 4 for identification in evidence and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The key tag marked Plaintiff’s Exhibit 4.)

Mr. Sullivan: Now resuming the reading of the deposition:

(Deposition of John J. Farrell.)

“Q. Will you tell me, Mr. Farrell, what was done with the key tag?

“A. They were also distributed among our guests and patrons.

“Q. What is your next item? A. Radios.

“Q. I show you this article and ask you whether this is an identical sample and one of the items which you have described as 400 radios at a cost of \$4840? A. It is.

“Mr. Goldwater: I offer that for identification.

“(Radio, referred to, thereupon marked Plaintiff’s Exhibit 5 for identification, 10/2/46.)”

Mr. Sullivan: At this time, if your Honor please, I will show Mr. Picard Plaintiff’s Exhibit No 5 for identification (handing).

I offer Plaintiff’s Exhibit 5 for identification in evidence and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The radio was marked Plaintiff’s Exhibit 5.)

I now resume reading of the deposition:

“Q. Will you tell me what was done with those 400 items?

“A. They were distributed among our patrons.

“Q. What is your next item?

“A. Calendars.

“Q. I show you this frame, Mr. Farrell, which encloses a lithograph bearing the name “The Stork Club,” and 12 reproductions of photographs with

(Deposition of John J. Farrell.)

the month of September 1941, and ask you if that is a sample, identical with the 15,700 items, which you have described as calendars purchased by the Stork Club, at a cost of \$2305.20?

“A. Yes, that is correct.

“Mr. Goldwater: I offer that for identification.

“(Frame bearing the name “The Stork Club,” etc., thereupon marked Plaintiff’s Exhibit 6 for identification, 10/2/46.)”

I am showing it to Mr. Picard (handing).

I offer Plaintiff’s Exhibit 6 for identification, which is referred to in the deposition, in evidence, if your Honor please, and ask that it be admitted and marked as Plaintiff’s Exhibit 6 in evidence.

The Court: It may be admitted and marked.

(The frame bearing name “The Stork Club” was marked Plaintiff’s Exhibit 6.)

I now resume the reading of the deposition: [29]

“Q. Will you tell us what was done with these calendars?

“A. They were distributed amongst our patrons.

“Q. What is your next item on the list, Mr. Farrell?      A. Playing cards.

“Q. I show you two boxes containing playing cards and ask you if they are identical with the 3975 items of playing cards purchased by the Stork Club at a cost of \$1012.99?      A. They are.

“Mr. Goldwater: I ask they be marked for identification.

“(Two boxes containing playing cards thereupon

(Deposition of John J. Farrell.)

marked Plaintiff's Exhibit 7-A and 7-B for identification, 10/2/46.)”

If your Honor please, I have Plaintiff's Exhibit 7-A and 7-B for identification which I am showing to Mr. Picard.

At this time the Plaintiff offers in evidence Exhibit 7-A and 7-B for identification and asks that they be duly admitted and marked as Exhibit 7-A and 7-B in evidence, respectively.

The Court: They may be admitted and marked.

(Two boxes containing playing cards were marked Plaintiff's Exhibit 7-A and 7-B.)

Mr. Sullivan: Might I call to your Honor's attention that we have opened the packages or boxes of cards which appear to be playing cards with the words "Stork Club" and the insignia consisting of the stork standing on one leg, with a high hat on the back of the playing card.

Now resuming the reading of the deposition, if your Honor [30] please:

“Q. Will you tell us what was done with those 7000-odd items?

“A. They were distributed among our patrons.

“Q. What is your next item?

“A. 160 fountain pens.

“Q. Have you any samples of these fountain pens? A. No, we do not.

“Q. Can you tell us what year they were purchased in? A. They were purchased in 1945.

“Q. Was the pen made of silver? A. Yes.

(Deposition of John J. Farrell.)

“Q. What type of pen was it? Do you know the manufacturer?”

“A. Known as the Reynolds Pen.

“Q. From whom were they purchased?”

“A. 122 pens were purchased from Gimbel Brothers, and 38 pens were purchased from the Parker Pen Company.

“Q. Did the pen have engraved upon it the name “Stork Club”?”

“A. The Reynolds pens did.

“Q. But the Parker pen did not?”

“A. No, the Parker pen did not.

“Q. What happened to those pens?”

“A. Those pens were distributed among our patrons.

“Q. What is the next one? [31]

“A. Alligator bags.

“Q. How many items of alligator bags were purchased? A. Forty-two.

“Q. At what cost?”

“A. At a cost of \$2612.29.

“Q. Have you any samples or have you one of those items in your possession?”

“A. No, I don't.

“Q. The Stork Club has not?”

“A. The Stork Club has not.

“Q. What happened to them?”

“A. They were distributed among our patrons.

“Q. Can you tell us from whom they were purchased?”

“A. They were purchased from Koret.

(Deposition of John J. Farrell.)

“Q. Do you have the bill for those items present here? A. Yes, the bill is here.

“Q. What is the next item?

“A. Lipsticks, 17,624.

“Q. I show you an item and ask you if that is identical with, or one of, the 17,624 lipsticks which were purchased by the Stork Club at a cost of \$5827.83 during the period mentioned?

“A. It is.

“Mr. Goldwater: Mark that for identification.

“(Sample of lipstick thereupon marked Plaintiff’s Exhibit [32] 8 for identification, 10/2/46.)”

I have here, if your Honor please, the lipstick which is marked Plaintiff’s Exhibit No. 8 for identification and I now show it to Mr. Picard.

I offer Plaintiff’s Exhibit 8 for identification in evidence and ask that it be duly marked, as Plaintiff’s Exhibit No. 8 in evidence.

The Court: It may be admitted and marked.

(Sample of lipstick marked Plaintiff’s Exhibit 8.)

Mr. Sullivan: If your Honor please, Mr. Picard has told me that he would not require me to bring in editions of the San Francisco Call-Bulletin, and I have had photostatic reproductions of them made. Now will you stipulate, or will you give some thought to this, Mr. Picard, that we can introduce the photostatic reproductions of those pages with the stipulation that they are reproductions of those

(Deposition of John J. Farrell.)

portions of the San Francisco Call-Bulletin and that that newspaper was distributed in this area.

Mr. Picard: I will go that far, that is to say, that the photostats may be produced with the same force and effect as the originals without conceding, of course, that the originals would be admissible until after I have seen them. But I will not require counsel to bring pages from the newspapers or the entire papers or anything like that because there is no use in wasting your Honor's time. [33]

Mr. Sullivan: Mr. Picard, I have the same situation relating to magazines which are known to you, probably, like American, Collier's, and I will be glad to show them to you, and probably we could make some agreement as to them.

Mr. Picard: Yes, that is agreeable.

The Court: We will take a recess now.

(Thereupon a recess was taken until 2 p.m.)

Afternoon Session, 4/1/47, 2:00 P.M.

Mr. Sullivan: May I proceed, your Honor?

The Court: Yes.

If your Honor please, I will continue reading the deposition of the witness John J. Farrell.

"Q. What is your next item?

"A. Compacts, 2108.

"Q. I show you this article and ask you if this is a sample of the 2108 compacts which were purchased by the Stork Restaurant at a cost of \$4216?

"A. It is.

"Mr. Goldwater: Mark that for identification.



(Deposition of John J. Farrell.)

“(Sample of compact thereupon marked Plaintiff’s Exhibit 9 for identification, 10/2/46.)”

Mr. Sullivan: At this time, if your Honor please, I will show Mr. Picard Plaintiff’s Exhibit 9 for identification which is mentioned in the deposition (handing).

Plaintiff offers Plaintiff’s Exhibit 9 for identification in evidence as Plaintiff’s Exhibit 9.

The Court: It may be admitted and marked.

(Sample of compact is marked Plaintiff’s Exhibit No. 9.)

Mr. Sullivan: Resuming the reading of the deposition:

“Q. What was done with those compacts, Mr. Farrell?”

“A. Those compacts were distributed among our patrons.

“Q. What is your next item? [35]

“A. Cigarette holders.

“Q. I show you an article and ask you if this is a sample of the cigarette holders, of which you said the Stork Club purchased 86,000 at a cost of \$818.75?”

“A. That is one of them.

“Mr. Goldwater: Mark that for identification.

“(Sample of cigarette holder thereupon marked Plaintiff’s Exhibit 10 for identification, 10/2/46.)”

I will at this time show Mr. Picard Plaintiff’s

(Deposition of John J. Farrell.)

Exhibit No. 10 for identification which I have produced here in court (showing).

The Plaintiff offers Plaintiff's Exhibit 10 for identification in evidence and asks that it be admitted and marked.

The Court: It may be admitted and marked.

(Sample of cigarette holder marked Plaintiff's Exhibit 10.)

Mr. Sullivan: Resuming the reading of the deposition:

"Q. What is your next item?

"A. 'Stork Talk' pamphlet.

"Q. I show you an eight-page pamphlet containing photographs and underwritings and ask you if that is one of the 221,500 items you have described at 'Stork Talk' printed by the Stork Club at a cost of \$6163.02? A. It is.

"Mr. Goldwater: Mark that.

"(Eight-page pamphlet entitled 'Stork Talk' thereupon [36] marked Plaintiff's Exhibit 11 for identification, 10/2/46.)"

At this time I will show Mr. Picard Plaintiff's Exhibit No. 11 for identification which is marked October 2, 1946, and entitled "Stork Talk," (showing).

The Plaintiff offers Plaintiff's Exhibit No. 11 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Deposition of John J. Farrell.)

(Eight-page pamphlet entitled "Stork Talk" is marked Plaintiff's Exhibit No. 11.)

Mr. Sullivan: Resuming the reading of the deposition.

"Q. Was it the policy and purpose of the Stork Club to reproduce in 'Stork Talk' pictures of persons prominent in the social and theatrical and industrial world as they appeared at various times at the Stork Club? A. It was.

"Q. What was done with those copies of 'Stork Talk'?"

"A. They were mailed to our patrons.

"Q. Did you supervise the mailing?"

"A. I did.

"Q. Was it done in the office of which you have charge? A. Yes.

"Q. And done under your direction?"

"A. Yes, under my direction.

"Q. What is your next item? [37]

"A. Post cards.

"Q. I show you a post card and ask you if this is one of the items which you described as 658,350 post cards purchased by the Stork Restaurant at a cost of \$3051.87?"

"A. That card is not one of the cards which is included in the 658,360.

"Q. Is this a card identical with another number of cards which were also sent? A. It is.

"Q. Sent to whom?"

"A. To our patrons, on the mailing list.

(Deposition of John J. Farrell.)

“Q. Have you a sample of one of the 658,350 cards which you described?

“A. No, I have not, but there is a replica on the calendar that I mentioned before, of that card.

“Q. You mean that the cards or reproductions of the photographs of the various women who appear in a number of the reproductions, in Exhibit 6 for identification? A. Yes.

“Q. Do you know what photographs they represent?

“A. They are photographs of models of famous artists.

“Q. Are they reproductions of photographs, or are they photographic reproductions of original drawings?

“A. They are photographic reproductions of the original drawing. [38]

“Q. Do you know by name some of the artists who produced these original drawings, or some of them?

“A. William Arthur Brown, I believe, was one; James Montgomery Flagg, Dean Cornwall, Gilbert Bundy, John LaGatta, Russell Patterson, and others.

“Q. What did you say was done with these cards?

“A. They were mailed to our patrons.

“Q. What is your next item?

“A. Ties and scarfs.

“Q. Have you any sample of the ties and scarfs

(Deposition of John J. Farrell.)

that were purchased, which you described in the list of items which you read into the record?

“A. No.

“Q. Do you know from whom those ties were purchased?

“A. They were purchased from Budd, Ltd., and DePinna.

“Q. Are those both retail department stores in the City of New York?      A. They are.

“Q. Do any of them bear the insignia or the name ‘Stork Club’?

“A. Some of the ties did.

“Q. Were there any substantial number of them?

“A. I cannot say the exact number.

“Q. All of them did not?

“A. All of them did not, no. [39]

“Q. What was done with those ties?

“A. They were distributed among our patrons.

“Q. That is, as gifts?      A. As gifts.

“Q. What is your next item?

“A. Perfume.

“Q. Have you a sample of the perfume that was distributed, and of which you have said there were 22,229 items purchased at a cost of \$102,549.54, during the period mentioned?

“A. No, I have not.

“Q. Did any or all of those items bear the name or the insignia of ‘Stork Club’?

“A. Some of the items did bear the name of ‘Stork Club.’

(Deposition of John J. Farrell.)

“Q. Can you tell us from whom those items were purchased?

“A. They were purchased from Esme of Paris, Parfum Charbert, Parfum Corday, The Caron Corporation, Schiaparelli, Scheherezade, Chanel, Parfum Melora, Lucien LeLong, Lynette, Gean Nate, Fred Lunning and Elizabeth Arden.

“Q. Have you the bills of the items so purchased from each of these manufacturing and distributing concerns, whom you have mentioned?

“A. Yes.

“Q. Are they present for examination by defendants' counsel, if he wishes to do so?

“A. Yes. [40]

“Q. You know all these bills were paid and they aggregate in total \$102,549.54?

“A. That is correct.

“Q. What was done with all of those items?

“A. They were distributed among our patrons.

“Q. What is your next item?

“A. Lucky coins.

“Q. I show you here two articles and ask you if these are identical with the items which you have described as 639,923 lucky coins purchased by the Stork Restaurant, Inc., at a cost of \$11,693.50?

“A. They are.

“Mr. Goldwater: I ask they be marked for identification.

“(Lucky coins referred to, thereupon marked

(Deposition of John J. Farrell.)

Plaintiff's Exhibit 12-A and 12-B for identification, 10/2/46.)”

Now I will show Mr. Picard Plaintiff's Exhibit No. 12-A and 12-B for identification which are produced here in court (showing).

Plaintiff at this time, if your Honor please, offers in evidence Plaintiff's Exhibit 12-A and 12-B for identification and asks that they be duly admitted and marked.

The Court: They may be admitted and marked.

(Lucky coins were marked Plaintiff's Exhibit 12-A and 12-B.)

Mr. Sullivan: Resuming the reading of the deposition:

“Q. Were these lucky coins distributed to the patrons and [41] customers of the Stork Club?

“A. Yes, they were.

“Q. What is your next item?

“A. Book Matches.

“Q. I show you an article and ask you if this is a sample of the 6,983,750 book matches purchased by the Stork Restaurant during the period mentioned, at a cost of \$18,095.42?

“A. It is.

“Mr. Goldwater: Mark that for identification.

“(Sample of book matches thereupon marked Plaintiff's Exhibit 13 for identification, 10/2/46.)”

Mr. Sullivan: At this time I will show Mr.

(Deposition of John J. Farrell.)

Picard Plaintiff's Exhibit 13 for identification which I have produced here in court (showing).

The Plaintiff offers Plaintiff's Exhibit No. 13 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Sample of book matches marked Plaintiff's Exhibit 13.)

Mr. Sullivan: Resuming the reading of the deposition:

"Q. During the period mentioned were all of these six million odd book matches distributed to patrons of the Stork Club? A. They were.

"Q. Were they all distributed at the club or were some of [42] them distributed in any other manner?

"A. Some were distributed by mail.

"Q. That is, to certain selected names on your mailing list?

"A. Yes, and there were also some distributed by the TWA, the airport company, and they were distributed from their different airports all over the country.

"Q. Was that by special arrangement that they were furnished to the air lines with the understanding that they would be distributed from the airports? A. That is correct.

"Q. What is your next item?

"A. Jewelry.

"Q. Will you describe some of the items of jew-



(Deposition of John J. Farrell.)

ely included in your statement that there were 26,608 separate items of jewelry purchased by the Stork Club at a cost of \$9,969.36?

“A. Stork Club pins, Stork pins.

“Q. I show you two samples, one of gold and one of silver, of an article appearing to be a pin, and ask you whether these are samples of the Stork Club pins included in the total of 26,608 items?

“A. They are.

“Q. Do you know how many of each of these were distributed?

“A. I know that over 14,000 of these particular pins were distributed. [43]

“Q. Both of gold and silver?

“A. That is correct.

“Mr. Goldwater: I ask these be marked for identification.

“(Two articles, being one gold and one silver pin, thereupon marked—gold pin—as Plaintiff’s Exhibit 14-A for identification; silver pin marked Plaintiff’s Exhibit 14-B for identification, 10/2/46.)”

I now show Mr. Picard Plaintiff’s Exhibit No. 14-A for identification and Plaintiff’s Exhibit No. 14-B for identification which are produced here in court (showing).

Plaintiff at this time offers in evidence Plaintiff’s Exhibit No. 14-A for identification and 14-B for identification and asks that they be duly admitted and marked.

(Deposition of John J. Farrell.)

The Court: They may be admitted and marked.

(The gold pin is marked Plaintiff's Exhibit No. 14-A, and the silver pin is marked Plaintiff's Exhibit No. 14-B.)

Mr. Sullivan: Resuming the reading of the deposition:

"Q. Can you recall now some of the other items of jewelry included in the total of 26,608 items?

"A. Yes, there were Stork earrings.

"Q. You mean, earrings, in the shape of a stork, for wear by women? A. Yes.

"Q. When I say 'in the shape of a stork,' I mean to ask whether the shape was in the form of the insignia which appears [44] on numerous of these items already marked for identification.

"A. Yes.

"Q. In the same insignia form?

"A. In the same insignia form. There were also cuff-links.

"Q. Did they bear the insignia of the Stork Club? A. No.

"Q. The cuff-links did not?

"A. The insignia—yes.

"Q. They were not in the form of the insignia, but they did bear the insignia?

"A. They were the insignia, the same as the pins.

"Q. How did it appear,—was it by engraving on the links?

"A. It was cut out the same as the pins.

(Deposition of John J. Farrell.)

“Q. The link was shaped in the form of the insignia? A. That is correct.

“Q. Can you think of any other items of jewelry included in that total?

“A. They were all pins or brooches that I think of now, cuff-links and earrings.

“Q. May I ask whether you have the bills in the file, which were produced, for the total of 26,608 items? A. I have.

“Q. Do you know that those bills were all paid by the Stork Club? A. They were. [45]

“Q. I ask you, with respect to all of these items, in the event I have omitted asking the question, in respect to any single one, whether the bills for all of the items that you have described, as purchased by the Stork Club and distributed to its customers and its patrons, are present here at this hearing? A. They are.

“Mr. Goldwater: I offer them for examination if counsel wishes to identify any of them or examine in respect to any of them.

“Q. I don't know whether I asked you if all of these 26,608 items of jewelry, with the exception of a few samples which you produced here, were distributed among the patrons of the Stork Club?

“A. They were.

“Q. Mr. Farrell, I show you a cardboard or paper article bearing the insignia of, and the name, 'Stork Club,' and ask you whether that was also used for publicity and advertising purposes.

“A. It was.

(Deposition of John J. Farrell.)

“Q. Can you tell us how many of these were purchased? A. No, I can't.

“Q. Was it in the hundreds of thousands?

“A. They were well into the thousands.

“Q. Have you been able to find the bill for this item? [46]

“A. I did have some bills. They are probably among the ones I have here, now, from the Lion Match Company. I took off the matches, and I didn't take off the other advertising matter.

“Q. Such as those cartons which are called 'wrapad'; but you are able to say it was in the many thousands? A. Yes, I would say so.

“Q. Were those also distributed to customers of the Stork Restaurant? A. They were.

“Mr. Goldwater: I ask that be marked for identification.

“(Paper article, referred to, thereupon marked Plaintiff's Exhibit 15 for identification, 10/2/46.)”

At this time I will show Mr. Picard Plaintiff's Exhibit 15 for identification which I produced here in court (showing).

The Plaintiff offers at this time Plaintiff's Exhibit 15 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Paper article is marked Plaintiff's Exhibit No. 15.)

(Deposition of John J. Farrell.)

Mr. Sullivan: Resuming the reading of the deposition, if your Honor please:

“Q. Mr. Farrell, I show you a leather article and ask you what it is. A. It is a dice cup. [47]

“Q. This bears the name ‘Stork Club NYC’ with the insignia that you have already described. I ask you whether you know if any number of these were purchased by the Stork Club and distributed among the patrons for purposes of advertising and publicity.

“A. Yes, they were, and they were distributed.

“Q. Can you tell us how many?

“A. Not offhand.

“Q. Do you know whether there were 100 or more?

“A. Yes, I would say there were over 1000 of them purchased.

“Q. Have you been able, up to this point, to segregate the bills for these particular items?

“A. I believe I can find them.

“Q. Do you know from whom they were purchased?

“A. They were purchased from the Elklold Company.

“Q. You think the bill for these items is among the duplicate bills?

“A. No, that is not among them.

“Mr. Goldwater: I ask that be marked for identification.

“(Dice cup, referred to, thereupon marked

(Deposition of John J. Farrell.)

Plaintiff's Exhibit 16 for identification, 10/2/46.)”

I will show Mr. Picard Plaintiff's Exhibit No. 16 for identification which I produced here in court (showing).

Plaintiff offers in evidence Plaintiff's Exhibit No. 16 [48] for identification and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Dice cup is marked Plaintiff's Exhibit No. 16.)

Mr. Sullivan: Resuming the reading of the deposition:

“Q. I show you an enameled receptacle, and ask you what that is. A. An ashtray.

“Q. Is that an ashtray which was used by the Stork Club and/or distributed by it to its patrons?

“A. Yes, it was used by the Stork Club and some of them were distributed among our patrons.

“Q. Where did they appear in the Stork Club?

“A. On the tables in the dining-room.

“Q. They are still so used? A. Yes.

“Q. Can you say for how many years they have been so used?

“A. About five or six years, I would say.

“Q. Do you know how many of these were purchased? A. Not offhand, no.

“Q. Can you say how many were distributed among the patrons?

“A. I would say there were several thousand.

(Deposition of John J. Farrell.)

“Q. Have you been able to locate the bill for these items?      A. No, I have not.

“Q. Do you know from whom they were purchased?

“A. I know some of them were purchased from Nathan Straus-Duparquet. [49]

“Mr. Goldwater: I ask that be marked for identification.

“(Ashtry, referred to, thereupon marked Plaintiff’s Exhibit 17 for identification, 10/2/46.)”

If your Honor please, I will at this time show Mr. Picard Plaintiff’s Exhibit No. 17 for identification which I have produced here in court (showing).

Plaintiff offers Plaintiff’s Exhibit No. 17 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Ashtray is marked Plaintiff’s Exhibit No. 17.)

Mr. Sullivan: Resuming the reading of the deposition:

“Q. I show you a sticker with paste attachment on the back and ask you whether this represents an item used in the advertising and publicity of the plaintiff, Stork Restaurant, Inc.?      A. It is.

“Q. How was this used; in what fashion?

“A. It was pasted on packages and bags, and

(Deposition of John J. Farrell.)

we had smaller ones than those for pasting into the hats of our customers.

“Q. You say some were pasted on packages and bags. You mean, packages and bags of patrons checked at the Stork Club?

“A. Yes, which were checked at the Stork Club.

“Q. Have you any idea how many of these were purchased and used by the Stork Restaurant in that fashion?

“A. It was way up into the thousands. [50]

“Q. Were they also used on packages mailed out by the Stork Club?

“A. All packages mailed out had those stickers.

“Mr. Goldwater: I ask that be marked.

“(Sticker referred to thereupon marked Plaintiff’s Exhibit 18 for identification, 10/2/46.)”

I have here Plaintiff’s Exhibit 18 for identification which is the sticker referred to and I have shown it to Mr. Picard.

At this time Plaintiff offers Plaintiff’s Exhibit 18 in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The sticker is marked Plaintiff’s Exhibit No. 18.)

Mr. Sullivan: Resuming the reading of the deposition:



(Deposition of John J. Farrell.)

“Q. I show you a small sticker of the same character as the last exhibit. Is this the sticker that you described as one of the small ones, similar to the one last marked for identification?”

“A. Yes, and it is also used on the back of some of our mail.

“Q. Can you say how many of these were purchased and used by the Stork Club, which you described?”

“A. They were way up in the thousands.

“Q. Are they also used in the hat bands of customers by pasting them in while the customer is enjoying the facilities of the Stork Club? [51]

“A. Yes.

“Mr. Goldwater: I ask that be marked for identification.

“(Smaller sticker, referred to, thereupon marked Plaintiff’s Exhibit 19 for identification, 10/2/46.)”

At this time, if your Honor please, I will show Mr. Picard Plaintiff’s Exhibit 19 which I have produced here in court (showing).

Plaintiff will offer Plaintiff’s Exhibit 19 for identification in evidence and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The smaller sticker is marked Plaintiff’s Exhibit 19.)

Mr. Sullivan: Resuming the reading of the deposition:

(Deposition of John J. Farrell.)

“Q. I show you a picture with the representation of the insignia of the Stork Club on it and ask you if that is an item used in the publicity and advertising program of the Stork Club during the years that you have described? A. It is.

“Q. And were these used in the Stork Club?

“A. They were used in the Stork Club, and some of them have been distributed among our patrons.

“Q. Can you tell us how many were distributed among your patrons? A. No, I cannot.

“Q. Do you know from whom they were purchased?

“A. I believe they were purchased from Nathan Straus-Duparquet. [52]

“Q. Can you tell us, now, how many were purchased or how many were distributed?

“A. No, I cannot.

“Q. Do you know the approximate years they were so distributed?

“A. They have been distributed since about 1944.

“Mr. Goldwater: I ask that be marked.

“(Pitcher, referred to, thereupon marked Plaintiff's Exhibit 20 for identification, 10/2/46.)”

At this time, if your Honor please, I will show Mr. Picard the pitcher referred to which has been previously marked Plaintiff's Exhibit No. 20 for identification (showing).

At this time, if your Honor please, the Plaintiff

(Deposition of John J. Farrell.)

offers Plaintiff's Exhibit 20 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The pitcher was marked Plaintiff's Exhibit 20.)

Mr. Sullivan: Resuming the reading of the deposition:

"Q. I show you a paper napkin bearing the name and insignia of the Stork Club, 3 East 53rd Street, and ask you if that is an item that was used in the publicity and advertising program.

"A. It is.

"Q. Can you tell us from whom those were purchased?

"A. From Harlem Paper Products. [53]

"Q. Have you located the bill for the number that were purchased?

"A. I believe I can locate them.

"Q. Do you know how many were purchased?

"A. No.

"Q. Where were they used?

"They have been used at the bar of the Stork Club.

"Q. For how long, approximately?

"A. For about eight years.

"Q. Can you state whether the number ran into the hundreds or thousands?

"Hundreds of thousands.

(Deposition of John J. Farrell.)

“Mr. Goldwater: I ask that be marked for identification.

“(Paper napkin, referred to, marked Plaintiff’s Exhibit 21 for identification, 10/2/46.)”

At this time I will show Mr. Picard Plaintiff’s Exhibit 21 for identification which I have produced in court (showing).

At this time Plaintiff offers in evidence Plaintiff’s Exhibit 21 for identification and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Paper napkin is marked Plaintiff’s Exhibit 21.)

Mr. Sullivan: Then, if your Honor please, may the record show that I have finished reading Page 49 of the deposition where the following appears:

“(Colloquy off the record with referenced to adjourned date of examination.)

“(On consent, the examination was adjourned to a date to be agreed upon by counsel.)”

I will read from Page 51 of the deposition.

“(Met pursuant to agreement.)”

“Mr. Goldwater: Mr. Farrell is recalled.

“John J. Farrell resumed the stand, having previously been duly sworn, testified as follows:

“Direct Examination (Continuing.)

“By Mr. Goldwater:

“Q. Mr. Farrell, on the previous examination you testified that the books which the Stork Club

(Deposition of John J. Farrell.)

maintained consisted of a general ledger, purchase journal, petty cash book, cash receipts book or disbursements book, and earnings book; is that correct?

“A. That is correct.

“Q. It appears that, in answer to a question whether correct records and entries of all the transactions of the Stork Club were kept in books for advertising expenses of all kinds, during the period you described, that you said they were so correctly kept; is that right?      A. That is right.

“Q. Were the figures concerning advertising expense of all categories, to which you testified in your previous examination, obtained from the books in which these records were kept by the [55] Stork Restaurant, Inc.?      A. Yes.

“Q. I would like you now to testify as to how these figures found their place in the ledger which, I understand, is the final place of entry. What would be the first book of entry in which these items would find their place?

“A. The first book of entry in most cases would be the purchasing journal. That would be entered from the bill.

“Q. From the purchase journal where would they then be transferred?

“A. The total of the advertising column in the purchase journal would be posted to the general ledger, the advertising account in the general ledger.

“Q. That general ledger is the book from which you say you took these final totals?

“A. That is correct.

(Deposition of John J. Farrell.)

“Q. So far as any of these figures involved cash payments, where would the first entry find itself?

“A. Cash payment, the first entry would find itself in the cash disbursements book.

“Q. And from there transferred where?

“A. To the general ledger. In some cases there are some bills that were not entered in the purchase journal that were paid immediately, and they would be entered also in the cash disbursements book. [56]

“Q. From there was it transferred to the general ledger? A. Yes, to the general ledger.

“Q. Are the general ledgers for all of these periods as well as the purchase books and the cash books here? A. Yes.

“Q. Are there present at this hearing all of the books and records from which the original entries, of each purchase or each disbursement for advertising and publicity purposes were made, and can be found? A. Yes.

“Q. You referred in your last examination, at Page 16, to work sheets upon which you entered the totals which you computed on each of the items of expenditure for the purpose which you enumerated from the years 1937 to 1945. Were the work sheets, that you there referred to, these yellow sheets which were subsequently marked Plaintiff's Exhibit 1 for identification? A. Yes.

“Q. These are the work sheets (indicating)?

“A. Those are the work sheets.

“Q. From which books did you obtain the figures which you entered on this exhibit?

(Deposition of John J. Farrell.)

“A. Those figures entered on the exhibit were taken from the actual bills.

“Q. Are all the actual bills from which you took those figures here present? [57] A. They are.

“Q. Are they contained in these folders which were marked as Exhibit 2? A. Yes.

“Mr. Goldwater: Mr. Frank, I would like your consent to have the reporter mark at some convenient time each of these folders for identification, with a sub-letter under the same exhibit number, as Exhibit 2-A, 2-B, and so forth, indicating the number of bills in each folder. I will not take the time to do that right now.

“Mr. Frank: That is agreeable.

“Mr. Goldwater: There are 88 folders in all, each containing separate bills.

“(Same marked Plaintiff’s Exhibit 2-A to and including 2-HHHH.)

“Q. Mr. Farrell, can you tell us the number of persons employed by Stork Restaurant, Inc. in its establishment in New York, and the operation of the Stork Club, and the capacity in which they are employed as of any recent period?

“A. Yes, as of September 13, 1946, there were 244 on the payroll.

“Q. Will you break those down into employees of various classes?

“A. There were 27 musicians, 41 kitchen help, 94 restaurant help, which consists of headwaiters, captains, waiters and [58] busboys; 12 bar em-

(Deposition of John J. Farrell.)

ployees and 70 general employees consisting of general help around the club.

“Q. That would be these employees?

“A. Yes, these employees, and coatroom attendants, stewards in the storeroom, porters, doormen, cashiers, checkers, receptionists, telephone operators, photographers, publicity men, managers and assistant managers.

“Q. From what book have you compiled those records? A. From the payroll record.

“Q. Is the payroll record here present?

“A. Yes.

“Q. Mr. Farrell, will you tell us now what the gross amount of business of the Stork Restaurant, Inc. in its establishment known as the Stork Club in New York, was during each of the years 1935 through the year 1945?

“A. In 1935, the gross was \$497,356.94; 1936, \$698,411.92; 1937, \$703,710.68; 1938, \$625,112.18; 1939, \$632,596.13; 1940, \$615,918.54; 1941, \$698,844.73; 1942, \$877,899.47; 1943, \$1,202,423.90; 1944, \$1,443,515.52; 1945, \$1,660,074.85.

“Q. What is the total for that period of eleven years? A. \$9,655,864.96.

“Q. Can you tell us the approximate number of persons who patronize the Stork Club during the course of an average day in 1945, and will you tell us how you reached the conclusion of the figure you are testifying to? [59]

“A. The average number of people in the club are approximately 1500 a day. I took those figures



(Deposition of John J. Farrell.)

from the original work sheets from which the checks are distributed for the first ten days of June, 1945, and the first ten days of November, 1945.

“Q. You have picked two periods of the year?

“A. One was rather slow, and the other one where business was at the top.

“Q. You considered, then, that the average would be a fair average for the year?

“A. That is correct.

“Q. Will you tell us how you calculated the total number?

“A. From the number of guests appearing on the checks.

“Q. Do the checks for each customer indicate the number of persons for whom the order is given?

“A. That is correct.

“Q. What books and records of the Stork Restaurant contain the entries with respect to the total amount of business, dollar business, in each of the years in which you testified?

“A. The general ledgers.

“Q. How does that figure reach the general ledger?

“A. Through the earnings book, which is a book that is kept of the daily receipts.

“Q. You entered daily the daily receipts calculated from the individual customer's checks?

“A. Yes. [60]

“Q. And then the total for the day is transferred where?

“A. The total for the day is entered into an

(Deposition of John J. Farrell.)

earnings book, and the total of the earnings book at the end of the month is transferred to the general ledger.

“Q. The general ledger and earnings book are both present?           A. Yes.

“Q. Is there a book or record present which will contain the number of checks on each of the days in the period for which you calculated the average number of customers?

“A. Yes, those records are here.

“Q. What records would those be?

“A. They are the earnings sheets.

“Q. You have those here present?

“A. Yes.

“Q. Can you tell us the approximate number of lunches, dinners and suppers served in the Stork Club on an average day in the year 1945?

“A. Taking the same period, 240 lunches, 460 dinners and suppers.

“Q. Dinners and suppers are the aggregate of 460?           A. Yes.

“Q. Is that determined from the number of checks as well?           A. Yes.

“Q. Is there a record available from which you can determine whether or not the Stork Club receives mention in the [61] public press, magazines and books, and what is that record?

“A. Yes, we have a record—a clipping service. We have a clipping service that gives us that record.

“Q. Can you tell us for any recent six-month period how many times the Stork Club operated by

(Deposition of John J. Farrell.)

the Stork Restaurant, Inc., in New York, has been mentioned in the public press, magazines, and including photos of people taken at the Stork Club?

“A. My recent check shows there were over a thousand mentions of the Stork Club in the public press. They contain only photos.

“Q. Those are mentions accompanied by photos taken in the Stork Club exclusively?

“A. Yes, exclusively.

“Q. That would not include all the mentions of the Stork Club?           A. Oh, no.

“Q. Will you tell us what period that includes?

“A. That includes from December 1945 to July 9, 1946.

“Q. How do you know there were a thousand, approximately, in that period?

“A. I checked the clippings when they came in from the press clipping service.

“Q. What specific interest have you in making such a check?

“A. Well, I am specifically interested in seeing how many [62] times we are mentioned in each of these.

“Q. Are you also billed for those clippings?

“A. Oh, yes. That is the main idea, to find out how many clippings we are being billed for.

“Q. Did you pay the bills for that number of clippings after checking the actual clippings from newspapers?           A. Yes, those bills were paid.

“Q. What area are those newspapers published in from which such clippings are taken?

(Deposition of John J. Farrell.)

“A. All over the United States.

“Q. Would that include practically every state in the union?

“A. Practically every state in the union, yes.

“Q. Was there a period in recent years during which you had subscribed to the clipping service for clippings which had mere mention of the Stork Club in some of the columns of the paper, without photographs?

“A. Yes, there was a period.

“Q. What period was that?

“A. The period in 1942. It was from March 4th to May 4th. We had over a thousand clippings in that period.

“Q. Those were 1000 clippings of mention in the local press for which you actually paid?

“A. Yes, that is right.

“Q. How long has the Stork Restaurant, Inc., operated the [63] Stork Club at 3 East 53rd Street, Mr. Farrell?      A. Since August, 1934.

“Q. Has the operation been continuous from that period down to date?      A. Yes.

“Q. Are you an officer of the Stork Restaurant, Inc.?      A. Yes.

“Q. What office do you hold?

“A. I am president.

“Q. Do you know who the principal stockholder of the Stork Restaurant, Inc., is?

“A. Hazel Billingsley.

“Q. Is she the wife of Sherman Billingsley, the managing director of the club?      A. Yes.

(Deposition of John J. Farrell.)

“Q. Has she been the principal stockholder since its incorporation? A. Yes.

“Q. Has Mr. Sherman Billingsley been the managing director of the club since August 1934?

“A. Yes, he has.

“Q. Do you know whether there was a Stork Club operated in New York prior to August 15, 1934? A. Yes.

“Q. Where was that operated, and for approximately what [64] period?

“A. At 53 East 51st Street for the period of 1929 to 1934.

“Q. By what corporation, if you know, was that club operated?

“A. The 53 East 51st Street Corporation.

“Q. Was it also for a time operated by a corporation known as Stork Restaurant Corporation?

“A. Yes.

“Q. Do you know who was the principal stockholder of both those corporations?

“A. Hazel Billingsley.

“Q. Who was the managing director of both those corporations? A. Sherman Billingsley.

“Q. Can you tell us what happened to those corporations and to the business when those corporations ceased business?

“A. The 53 East 51st Street Corporation was a successor in interest to the Stork Restaurant Corporation, and when they went out of business, all the assets, good will were purchased by Hazel Billingsley who, in turn, turned them over to the

(Deposition of John J. Farrell.)

Stork Restaurant, Inc., for the majority of issued stock in the Stork Restaurant, Inc.

“Q. As a matter of fact, was it not transferred for all of the issued stock?

“A. Yes, for all of the issued stock. [65]

“Q. That is, all of the issued capital stock?

“A. All of the issued capital stock, yes.

“Q. Was the name of the Stork Club transferred along with all those assets?

“A. Yes. That was included in the assets.

“Mr. Goldwater: I offer this stipulation, with the consent of Mr. Frank:

“It Is Hereby Stipulated and Agreed by and between the attorneys for the respective parties hereto that the foregoing testimony of John J. Farrell, with respect to the entries made by him personally, or under his supervision from books and records of the Stork Restaurant, Inc., which testimony is based on extracts made by him from such books and records, all of which were present at the taking of the deposition, shall have the same force and effect as though the said books and records were offered in evidence on the taking of the deposition, and during his testimony.

“It Is Further Stipulated and Agreed that all of said books and records are now, and will continue to be, available to counsel for the defendants for examination and inspection and reference thereto in connection with the examination of any witness whose deposition is taken herein, during the taking of such Depositions, or at any other time, at the convenience of counsel for the defendants; and

(Deposition of John J. Farrell.)

“It Is Further Stipulated and Agreed that any and all [66] objections, which might have been or could be made, based on the fact that such original books and records of Stork Restaurant, Inc., are not offered in evidence on the deposition, are hereby waived.”

Now, if Your Honor please, in connection with that stipulation, at the time that we were discussing the stipulation, that is, when I was discussing it with Mr. Goldwater in New York, I mentioned to Mr. Picard the fact that we did not want to bring the original books here to San Francisco, and Mr. Picard said that he would not require it, and I told him if he did we would make arrangements to do so. I will ask you now, Mr. Picard, if you will in accordance with this stipulation, stipulate that these records may be regarded as testimony without the necessity of these original books.

Mr. Picard: I will adopt Mr. Frank's stipulation.

Mr. Sullivan: Do you want to read the cross-examination?

Mr. Picard: Yes.

“Cross-Examination

“By Mr. Frank:

“Q. Do I understand, Mr. Ferrell, that there was a Stork Club operated under that name during the so-called prohibition period, that is, from 1929 up to the end of 1933? A. Yes.

“Q. And that the ownership and the direction of

(Deposition of John J. Farrell.)

that club was substantially similar to what has been carried on since [67] that date?

“A. That is right.

“Q. Was there any particular reason why there was this shift in owing or operating corporations at that time?

“A. No, except—there was no particular reason that I know of.

“Q. Were there any seizures of the property by the prohibition authorities during the period before the present corporation was formed?

“A. None that I know of.

“Q. Were there any arrests at the place, or claims in any form whatever by any of the authorities, that the Prohibition Law was violated in the operation of the place?”

Mr. Sullivan: May the record show that Mr. Goldwater makes the following objection: “I object to that on the ground that it is not material or relevant.” At this time, if Your Honor please, as counsel for the plaintiff, I will object to the question on the same grounds.

The Court: It may or may not become material. I will allow it subject to a motion to strike.

Mr. Picard: (Reading.)

“A. Not to my knowledge.

“Q. Were you in active employment during that period between 1929 and 1934?           A. No. [68]

“Q. Those circumstances might have existed without your knowledge?



(Deposition of John J. Farrell.)

“A. Yes, they might have, but not that I know of.

“Q. Since 1934 you have been actively engaged in the business as accountant for the corporation?

“A. Yes.

“Q. Of course, your connection with it has been simply from the standpoint of bookkeeping and keeping of records. You have had no actual direction of the business?           A. No.

“Mr. Frank: That is all.

“Sworn to before me this 4 day of Dec. 1946. John J. Farrell. Louis G. Schwartz, Notary Public.”

Mr. Sullivan: At this time, if Your Honor please, I would like to read the testimony of the witness John J. Farrell when he resumed the stand, beginning on Page 110:

“Mr. Goldwater: I would like to ask Mr. Farrell a few more questions.

“John J. Farrell resumed the stand, testified further as follows:

“Redirect Examination

“By Mr. Goldwater:

“Q. Mr. Farrell, you testified in your examination, at our first hearing, that the total sum which was spent for advertising publicity purposes by the Stork Restaurant, Inc. for 1935 [69] through the year 1945 was approximately \$727,000?

“A. That is correct.

“Q. Subsequently you testified to specific items purchased for distribution by the Stork Club bear-

(Deposition of John J. Farrell.)

ing the insignia of the Stork Club between the years 1937 and 1945 which aggregated approximately \$206,000?      A. Yes.

“Q. Can you tell us what additional expenditures there were by cash for items which were distributed in the same manner for advertising and publicity at the Stork Club during 1935 and 1936?

“A. \$80,618.

“Q. Can you tell us what additional expenditures there were during the years 1935 and 1936 under the heading of ‘House Charges’?

“A. For 1935 and 1936, \$110,509.

“Q. For the entire ten-year period from 1935 to 1945, how much would that item amount to?

“A. \$175,726.

“Q. What item would come under this heading of ‘House Charges’?

“A. Under ‘House Charges’ that would be items of food and liquor checks which were complimented to our guests.

“Q. What kind of guests particularly?

“A. Particularly they would be members of the newspaper [70] field and radio celebrities and stars of stage and screen, men in prominent and public life in the industrial world.

“Q. Was it the policy of the Stork Club to so compliment these people in its general program of establishing good will for the Stork Club in New York?

“A. Establishing good will and advertising, yes.

“Q. You have accounted, Mr. Farrell, for a total

(Deposition of John J. Farrell.)

of approximately \$461,000 of the total of \$727,000, which, you say, was expended in the aggregate in your publicity and advertising program. What would the difference be composed of?

“A. The difference would be composed of cash gifts, liquor purchases used for advertising, salary, supplies——

“Q. Salaries for advertising?”

“A. Salaries for advertising, supplies for the Advertising Department.

“Q. Such as what?”

“A. Photo supplies, cameras, developing fluid, prints, folders, and such things as that, and some fees to advertising agencies in the early years.

“Q. Are the books and records, both original entry and of final entry, indicating totals from which those figures were obtained, and in which the original items you mentioned are entered, all present here in this office?”

“A. Yes, they are present.

“Mr. Goldwater: That is all. [71]”

“Mr. Frank: No further questions.”

The Court: We will now take a recess.

(Recess.)

Mr. Sullivan: If Your Honor please, at this time plaintiff offers in evidence the testimony of the witness Donald Arden, by reading into the evidence the deposition of Donald Arden which was taken pursuant to notice and at the same law offices that I mentioned to Your Honor in connection with the

deposition of the witness John J. Farrell, with the same appearance on behalf of the parties, taken on November 1, 1946. And I at this time read that deposition in evidence:

Deposition of Donald Arden

“The Notary: Please state your name and address.

“The Witness: Donald Arden, 74 East Central Avenue, Maywood, New Jersey.

“Direct Examination

“By Mr. Goldwater:

“Q. Mr. Arden, are you associated with Stork Restaurant, Inc., the operator of the Stork Club at 3 East 53rd Street, New York.

“A. Yes, I am.

“Q. In what capacity?

“A. As publicity director and photographer.

“Q. How long have you been associated with the Stork Restaurant?

“A. Since 1939 until enlistment in the Navy in 1942, for [72] three years and eight months when I was out in service and back since October 15, 1945.

“Q. You were there three years and eight months and then out during the period of the war?

“A. I was out for three years and eight months in that period.

“Q. Your employment began, then, when?

“A. In 1939.

“Q. It has continued to date except for the period when you were in the Navy?

“A. That is correct.

(Deposition of Donald Arden.)

“Q. That is, during the late war?

“A. That is right.

“Q. You are now associated with the club as publicity representative?

“A. Yes, and photographer.

“Q. You know that the business of the Stork Restaurant, Inc. is the operation of the restaurant and night club known as Stork Club at 3 East 53rd Street?      A. Yes, I do.

“Q. Has that name been used all of the time that you have been employed at the Stork Restaurant, Inc.?      A. It has.

“Q. When you were first employed by Stork Restaurant, Inc., did the Stork Club use any insignia which was identified with [73] its operation?      A. Yes, it did.

“Q. What was the insignia?

“A. It was a stork with one leg perched up with a monocle and with a top hat.

“Q. Is it the same insignia which appears on the numerous exhibits which have been offered here during the deposition of Mr. Farrell, and which have been marked for identification in this proceeding?

“A. Yes.

“Q. Have you been here during all of the periods of the taking of Mr. Farrell's testimony?

“A. I have.

“Q. Can you identify each one of those exhibits which were offered, and which were identified by Mr. Farrell as an item which was used in the adver-

(Deposition of Donald Arden.)

tising and publicity of Stork Restaurant, Inc. for the Stork Club in New York?

“A. Yes, I can.

“Q. How long do you know of the existence of the Stork Restaurant and the use of this insignia, that you have described, by it in its publicity and advertising, prior to your association with the Stork Restaurant?

“A. Prior to my association with the Stork Club, in the vicinity of five years.

“Q. Do you know of your own knowledge that the gifts and [74] all of these items, which were marked for identification, were actually distributed in substantially the volume which Mr. Farrell has described in the general program of publicity and advertising the Stork Restaurant, Inc.?

“A. Yes, I do.

“Q. Did you participate in the distribution of a large volume of any one or more of these items,—yourself?

“A. I have in the majority of cases. I have been a witness in other cases being distributed by various members for the Stork Club.

“Q. You mean members of the staffs of the Stork Club?           A. Yes.

“Q. Will you give us an example of one or two of the items in which you participated in the distribution?

“A. I have seen these Stork Club ashtrays. I have seen those given out to numerous customers who requested them, and we also gave as souvenirs,

(Deposition of Donald Arden.)

to bring home, and show other patrons, of their visit to New York City at the Stork Club, and car emblems.

“Q. You refer to Exhibit No. 3 for identification?

“A. Yes. I have participated in giving these, and the car tags to each and every one of them.

“Q. You refer to the automobile tag?

“A. Yes. I participated in clamping them on different cars, of different visitors who owned automobiles. [75]

Then, radios—that is Exhibit No. 5 for identification—I have seen and participated in giving numerous radios to different debutantes of the society world in New York City.

“Q. What about the match pads?

“A. Match pads, I have given these out to hundreds—these match pads, Exhibit 13, are placed upon tables during the luncheon, dinner, cocktails and supper, and I would say that at least 1500 of these are taken out of the club, or given to different customers during each day of the week.

“Q. Have you also, yourself, participated in the preparation of many hundreds of thousands of those for mailing to customers?

“A. Yes. In fact, we subscribe to a service called Celebrated Service, and receive in the mail each and every day a list of arrivals and departures of various people in the public limelight, such as movie, stage, political, industrial, and anyone that is in the public limelight, we send these out and

(Deposition of Donald Arden.)

they are delivered by hand, and also mailed in special cartons, which the Post Office has passed upon, and we send a box or a carton—a box which contains 50 match boxes.

“Q. Have you sent many thousands of those, yourself?

“A. I would say, thousands and thousands of them.

“Q. Will you tell us whether you are familiar with the mailing lists used by the Stork Club for publicity and advertising purposes? [76]

“A. Yes, I am, very much so.

“Q. Will you tell us how that mailing list is prepared, and of what it is comprised?

“A. I would say, to begin with, our mailing list is in the vicinity of around 200,000 which consists of the registers of various schools, clubs, private mailing list of the movie people on the west coast, Congressmen, Senators, and Mayors; also, of social register of New York City and all over the United States.

“Q. Is there included in that list all sorts of this comprehensive mailing list, social registers of any of the cities in California?

“A. Yes. We have for display here a register from 1941 and 1935—

“Q. Is that for San Francisco?

“A. For San Francisco, itself. And we have used this book of the San Francisco register for our mailing purposes as prospective customers.

“Q. Do you know whether many articles for



(Deposition of Donald Arden.)

publicity and advertising purposes, distributed by the Stork Club, were sent through the United States mail to persons whose names appear in the social register you have described?

“A. Yes. I can say, many thousands of them; also in the vicinity of San Francisco, I have here for disposal tear sheets, duplicates of copies which were sent to various customers who visited the Stork Club in San Francisco and within forty-mile [77] district area of San Francisco. I have clippings and pictures. Here are a very few of them (witness indicating).

“Q. What is this called?

“A. Duplicates of caption sheets attached to the photograph itself, and mailed to the San Francisco papers.

“Q. You handed me 25 sheets bearing the heading, ‘Publicity Department, Stork Club, 3 East 53rd Street, New York.’ Are these what you have described as ‘captions’?

“A. That is correct, as captions. That is not the entire amount. Those are just a few taken out of the files recently.

“Q. To what was each of these captions attached?

“A. They were attached to the photographs of the persons that patronized the Stork Club, from San Francisco, or in the vicinity of San Francisco.

“Q. And the names of the persons whose photographs were taken at the Stork Club, I assume?

“A. Yes, those pictures were taken at the Stork

(Deposition of Donald Arden.)

Club, and also the names and addresses of the person whose picture was taken, and the caption was given by the persons themselves.

“Q. In each instance, was this caption attached to a photograph sent for re-publication in a newspaper?      A. Yes, it was.

“Q. And does the name of the newspaper to which it was sent appear in handwriting on each of these captions?

“A. Yes, it does, plus the date that it was sent by mail. [78]

“Q. Are many of these handwritten entries on these captions your own personal entries?

“A. Not all of them. We have a girl that does most of the typing of the captions, plus mailing.

“Q. Is that done under your direction and supervision?      A. That is right.

“Q. That is in your department, the department of which you are the head?

“A. That is right.

“Q. From your experience at the Stork Club, can you testify that these entries were made, and the dates were marked on each of these captions, on the date on which the captions were sent out accompanying the photograph to the newspaper whose name appears?

“A. And mailed the same day, yes.

“Q. That is in the regular course of business?

“A. That is our regular daily chore.

“Mr. Goldwater: I ask that this group of 25

(Deposition of Donald Arden.)

caption sheets be marked as a single exhibit for identification.

“(Group of 25 caption sheets thereupon marked Plaintiff’s Exhibit 22 for identification, 11/1/46.)”

Addressing myself to your Honor, I have produced here, if your Honor please, Plaintiff’s Exhibit 22 for identification which bears the signature of the reporter and is dated November 1, 1946, and I will submit them to Mr. Picard (showing). [79]

Plaintiff at this time offers in evidence Plaintiff’s Exhibit 22 for identification consisting of 25 caption sheets, and asks that they be admitted and marked.

The Court: They may be admitted and marked.

(Group of 25 caption sheets marked Plaintiff’s Exhibit 22.)

Mr. Sullivan: Resuming the reading of the deposition, if your Honor please:

“Q. You have handed me three photographs, 8 inches by ten inches, and each has a negative attached. Will you tell me where these photographs were taken?”

“A. Yes, those photographs were taken at the Stork Club, and the names were given by the people whose photographs were taken.

“Q. The people who are represented in the photographs? A. Yes, that is right.

“Q. Have you other photographs of residents of San Francisco or its vicinity, which were also taken at the Stork Restaurant?”

(Deposition of Donald Arden.)

“A. I imagine they can be checked without files and more can be produced.

“Q. You know that the photographs which accompany the caption sheets, which have just been introduced as Plaintiff’s Exhibit 22 for identification, each had attached to them a photograph similar to these three which you now hand me?”

“A. That is correct. [80]

“Mr. Goldwater: I offer these three photographs for identification.

“(Three photographs thereupon marked Plaintiff’s Exhibit 23 for identification, 11/1/46.)”

Not reading from the deposition, and addressing myself to your Honor, I have produced here Plaintiff’s Exhibit 23 for identification, which bears the signature of the reporter and the date November 1, 1946, and I show them to Mr. Picard.

I have here Plaintiff’s Exhibit 23 for identification consisting of three photographs, negatives, and I wish to offer them in evidence and ask that they be admitted in evidence as Plaintiff’s Exhibit 23.

The Court: They may be admitted and marked.

(The three photographs are marked Plaintiff’s Exhibit 23.)

Mr. Sullivan: Resuming the reading of the deposition:

“Q. Mr. Arden, do you know whether or not the Stork Restaurant subscribed from time to time to press clipping services known as Romeike Press Clippings, and also to the Burrelle’s Press Clipping Bureau? A. Yes.

(Deposition of Donald Arden.)

“Q. Did you, in accordance with the practice that you have just described, of sending out pictures of persons taken at the Stork Club in New York, together with caption sheets, send to many of the newspapers in California such photographs and caption sheets? [81]

“A. Yes. Besides this, customers that attend at the Stork Club, stars of the cinema world, stage, political and, I would say, the Mayor and Congressmen of that state in the San Francisco area, I have sent pictures, and continue doing the practice if and when I know they are in the club.

“Q. Have you sometimes sent pictures of persons who attended the Stork Club with such caption, which pictures were not taken at the Stork Club?

“A. There can be a case where I didn't send it direct, but I did send pictures to different wire syndications, such as the Associated Press or Acme News or United Feature Syndication, or International News Photo. They, in turn, wire or send prints, from the print I sent to them, to all of the various states in the United States.

“Q. And have you seen such material that you so distributed, reproduced in the newspapers of California, and have you had clippings of such reproductions furnished to you by Romeike Press Clippings and Burrelle's Press Clipping Bureau?

“A. Yes, I have, and I see them every day as we look at the clippings when they arrive.

“Q. I show you four such clippings, which

(Deposition of Donald Arden.)

appear to have come and are reported by Romeike to have come, from newspapers indicated on the clipping sheets with the material so published, and ask you if those clippings are the four clippings from such newspapers so received by you from Romeike, bearing reference [82] to the Stork Club in New York?      A. Yes, they are.

“Q. As to these, and all others of these clippings, which you have handed me, and which I propose now to offer, would you say the original photographs were taken at the Stork Club?”

“A. Yes, they were.

“Mr. Goldwater: I ask these four clippings be marked for identification, these being clippings from newspapers in California in December, 1940.

“(Four clippings thereupon marked Plaintiff’s Exhibit 24 for identification, 11/1/46.)”

Now, if your Honor please. I will show to Mr. Picard Plaintiff’s Exhibit 24 for identification. I talked to Mr. Picard a week or so ago about the necessity of repeating these original newspapers, and I believe he said that he would not require me to bring in the original newspapers. Is that correct, Mr. Picard?

Mr. Picard: That is correct.

Mr. Sullivan: Will it be stipulated that these newspaper clippings may be deemed to be admitted with the same full force and effect as if the original newspapers had been brought into court and a foundation established for it?

(Deposition of Donald Arden.)

Mr. Picard: Subject to the objection that these are all immaterial, irrelevant and incompetent.

Mr. Sullivan: Aside from that objection, with respect to [83] the presentation of the proof, will it be stipulated that these are true and accurate copies of the articles that appeared in the respective newspapers indicated by the attachment—by the attachment to the various clippings at or about the time indicated in the pink attachments.

Mr. Picard: I do not think that is quite correct. I think they are clippings from newspapers, but I object to them as immaterial, irrelevant and incompetent.

Mr. Sullivan: Will it be stipulated that they are clippings from the newspapers of the date appearing on the attachment to the clippings?

Mr. Picard: So stipulated.

The Court: They may be admitted and marked.

Mr. Sullivan: At this time may we offer these in evidence as Plaintiff's Exhibit 24, and for the convenience of your Honor, I have prepared an index for these, which, if I may, I would like to attach to them, so that it will be of some use to the Court in examining the exhibit?

The Court: Very well.

(The clippings from newspapers in California, in December, 1940, are marked Plaintiff's Exhibit 24.)

Mr. Sullivan: Resuming the reading of the deposition:

(Deposition of Donald Arden.)

“Q. I show you a group of clippings furnished by Romeike Press Clippings for the month of December, 1941, and ask you whether these are reproductions of photographs taken at the [84] Stork Club, with underwritings naming the Stork Club, which appeared in California newspapers during that month? A. Yes, they are.

“Mr. Goldwater: I offer these for identification.

“(Group of clippings, being ten in number, there-upon marked Plaintiff’s Exhibit 25 for identification, 11/1/46.)”

Not reading from the deposition, if your Honor please, at this time I will produce and I will show to Mr. Picard the clippings referred to as Plaintiff’s Exhibit 25 for identification along with an index sheet which I have prepared for your Honor’s convenience.

Mr. Picard: I will object to the majority of these, if your Honor please, as most of them are in Southern California.

The Court: I will allow them. It goes to the weight of the testimony.

Mr. Sullivan: Will it be stipulated with respect to Plaintiff’s Exhibit 25 for identification that they may be offered without the necessity of producing the newspapers themselves?

Mr. Picard: So stipulated.

Mr. Sullivan: And that the clippings are clippings of the newspapers indicated by the attachment at or about the date indicated on the attachment?



(Deposition of Donald Arden.)

Mr. Picard: So stipulated.

Mr. Sullivan: At this time Plaintiff offers Plaintiff's [85] Exhibit 25 for identification in evidence, and at the same time I will attach for the convenience of the Court an index or listing which I have prepared for your Honor's convenience.

The Court: They may be admitted and marked.

Mr. Sullivan: May I have these marked as one exhibit?

The Court: One exhibit.

(Romeike press clippings for month of December, 1941, are marked Plaintiff's Exhibit 25.)

Mr. Sullivan: Resuming the reading of the deposition:

"Q. I show you a group of 71 clippings from newspapers of photographs with underwritings mentioning the Stork Club attached, furnished by Romeike Press Clippings and Burrelle's Press Clipping Bureau, in accordance with your previous testimony, and ask you if those are clippings received by the Stork Restaurant of photographs taken at the Stork Club and reproduced in California newspapers upon the dates indicated on each?

"A. Yes, they are.

"Mr. Goldwater: I offer these for identification.

"Q. These are all in the year 1942?

"A. The date is shown by the clipping service.

"Mr. Goldwater: They all appear to be dated in 1942.

"(71 clippings referred to thereupon marked

(Deposition of Donald Arden.)

Plaintiff's Exhibit 26 for identification, 11/1/46.)”

I will at this time show to Mr. Picard a group of clippings which is marked Plaintiff's Exhibit 26 for identification, [86] November 1, 1946, which I produced here in Court along with a list that I have prepared for the clippings.

Mr. Picard: A lot of them are not even in the state of California.

Mr. Sullivan: Most of them are.

Mr. Picard: But there are some that are not. If your Honor please, I will object to all of these except those which are in San Francisco or the vicinity of San Francisco on the ground they are immaterial, incompetent.

Mr. Sullivan: If your Honor please, the theory of producing these is not only to show the prior widespread reputation of the Stork Club in San Francisco here but also throughout the whole United States, and particularly in California for the reason that a large number of patrons of the Stork Club are from the cinema and art colony in Southern California. These clippings indicate that the fame and the reputation of the Stork Club is spread throughout the entire state of California.

The Court: So that the record may be clear, state the purpose for the offer.

Mr. Sullivan: At this time the Plaintiff offers Plaintiff's Exhibit 26 for identification in evidence upon the following grounds, that the clippings from these newspapers, which I understand that counsel will agree are true and accurate clippings of the

(Deposition of Donald Arden.)

newspapers themselves, show that the Stork Club was known to the various communities in which the [87] respective papers were published; that the various communities were advised and were informed of the widespread reputation of the Stork Club and with the Stork Club's use of its name and in instances of its insignia; I am not too sure about the latter with respect to these clippings, but certainly the name was spread out and extended throughout the whole United States and particularly within the communities in which these newspapers were published; that furthermore, by so doing, in addition to expanding the reputation of the Stork Club, it was expansion of the patronage of the Stork Club, because by the mention of the Stork Club in these various papers prospective patrons of the Stork Club were induced through the advertisement and publicity in this particular medium, to become patrons of the Stork Club upon visits to New York.

The Court: Assuming your statement to be true, and assuming the theory of your case that you are presenting, and the purpose of this offer, how would they be affected by the Stork Club run here in San Francisco?

Mr. Sullivan: If your Honor please, the purpose of this evidence is to establish the fame and reputation and good will and name of the Stork Club in New York, and our theory of the case is that that name has become an asset, and the use of that name by other people will not only damage the

(Deposition of Donald Arden.)

good will and the name and the fame and reputation which has been built up by this tremendous advertising and publicity of the plaintiff in [88] this case; it will not only do that, if your Honor please, but it will, through the activities of the defendant which we will show to your Honor in this particular case, bring about a deception of the public, because the public has associated the name of the Stork Club with the organization which is in New York, with the business which is conducted at 3 East 53rd Street, New York, and the use of that name by other people will not only damage the business but it will cause the public, or it will be likely to cause the public to become confused, so that the public will think that other users of the name Stork Club and of the insignia which accompanies the Stork Club have some connection with the Stork Club that is in New York City.

So that there are two grounds, namely, an invasion of the property rights, of the good will, of an asset of fame and reputation, and secondly, there is the other unfair business practice, as we contend, that the public itself will be liable to some deception if it is permitted that other people use the name Stork Club.

The Court: I will hear from counsel.

Mr. Picard: If your Honor please, if the establishment in San Francisco was in any manner similar to the establishment in New York, there might be some reason to counsel's argument, but here at a distance of three thousand miles is a comparatively

(Deposition of Donald Arden.)

small bar and restaurant which does none of the things which counsel has attributed to the Stork Club in New York. He stated [89] that they have 244 employees. I take it, my client has about half a dozen employees. He has shown the various articles which are given away. The exhibits here show an elaborate place of business. The defendant's place is a comparatively small bar. It is impossible that anybody would be deceived into believing that the Stork Club in San Francisco is the Stork Club of New York. We do not use the stork, the insignia from which they claim they have built up a reputation. The only thing that is used is the name, the Stork Club, and I submit, if your Honor please, that none of the argument which was made here is applicable to the situation which exists in this case, a nightclub giving away hundreds or thousands of dollars of articles to their patrons, giving away hundreds of dollars in food and liquor to newspaper men, as compared with the small place in San Francisco which is not elaborate and which does not conduct the same type of business.

Mr. Sullivan: Might I say this: Counsel is not completely accurate in his statement that his client is not using the insignia, because the evidence will show—of course, counsel is just making statements. He is arguing from the present state of the record. We will show the use of this insignia, irrespective of whether they have discontinued the use of that insignia or not, and I think we can cite to Your Honor authority that if they did use the insignia

(Deposition of Donald Arden.)

and thereafter discontinued it, if the Plaintiff is to be given protection, the mere fact that part of [90] the unfair practice was discontinued by the defendant would not prevent or prohibit Your Honor from extending that protection against the use of the insignia by the defendant.

There is no question that they did use the insignia and we will prove it to this court.

Secondly, counsel talked about there being no confusion as between the establishment in New York City and the defendants' establishment. We will introduce evidence which will show that there is a liability to confuse, and I will submit to Your Honor cases in support of that contention.

The Court: You may proceed. I will allow it over the objection and subject to his motion to strike.

Mr. Sullivan: Plaintiff offers in evidence Plaintiff's Exhibit 26 for identification and along with them an index of the clippings which I have prepared and ask that Plaintiff's Exhibit 26 for identification be duly marked and admitted in evidence as one exhibit.

The Court: They may be admitted and marked.

Mr. Sullivan: Will it be stipulated that these clippings are clippings from the actual newspapers and that it will not be necessary for me to bring in the actual newspapers and that the clippings were in the newspapers at or about the time indicated on these pink slips attached.

Mr. Picard: So stipulated.

(Deposition of Donald Arden.)

(The 71 clippings referred to were marked Plaintiff's [91] Exhibit 26.)

Mr. Sullivan: I now resume the reading of the deposition if Your Honor please:

“Q. I show you another group consisting of 37 clippings, received from Romeike Press Clippings in New York, and ask you whether the photographs there appearing are reproductions of original photographs taken at the Stork Club, reproduced in the newspapers indicated as attached to each of these clippings? A. Yes, they are.

“Q. These are all in the year 1946, and the months and dates are indicated on each of the clippings? A. Yes.

“Mr. Goldwater: I ask these be marked.

“(37 clippings thereupon marked Plaintiff's Exhibit 27 for identification, 11/1/46.)”

Not reading from the deposition, if Your Honor please, I will submit to Mr. Picard at this time the clippings which have been marked Plaintiff's Exhibit 27 for identification, together with index which I have prepared for the convenience of the Court.

Mr. Picard: To which we will object on the ground, if Your Honor please, that none of them are from San Francisco and very few of them are in the vicinity of San Francisco and therefore immaterial, irrelevant and incompetent.

The Court: I will allow them under the same ruling. [92]

Mr. Sullivan: Plaintiff offers Plaintiff's Exhibit 27 for identification together with the index which

(Deposition of Donald Arden.)

I have prepared and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(37 clippings were marked Plaintiff's Exhibit 27.)

Mr. Sullivan: Mr. Picard, may we have the same stipulation with respect to Plaintiff's Exhibit 27 in evidence, eliminating the introduction of the actual newspapers.

Mr. Picard: Same stipulation.

Mr. Sullivan: Resuming the reading of the deposition:

"Q. Mr. Arden, do you know whether these clippings, which you have identified, represent all of the clippings received by Stork Restaurant of reproductions of photographs taken in the Stork Restaurant in the years which I have indicated, which reappeared in those newspapers, or do you know whether there are others which have also been received?

"A. There are many thousands of others that we have not received due to the fact that the clipping service claims that usually one picture out of ten, that appears in various papers, are picked up and sent to us by the clipping service itself and we have others, I would say, thousands and thousands of them in our files at the present time, which can be produced, if you wish to see them.

"Q. Each of these captions, which have been marked for identification, seems to be for only a



(Deposition of Donald Arden.)

portion of the years [93] mentioned. Were clippings of a similar kind received showing publications of photographs taken in the Stork Club, in California newspapers during other periods in each of those same years?       A. Yes.

“Q. You have not attempted, now, to produce all of them, but simply samples for various short periods?       A. That is correct.

“Q. Are your files available for inspection?

“A. Yes, they are.

“Q. For the many others that you say are there?

“A. Yes, they are.

“Q. Now reference has been made in Mr. Farrell's testimony to the use of postcards as an advertising and publicity medium by the Stork Restaurant. Do you know of your own knowledge of the use of thousands of such cards?

“A. Yes, I do. Postal cards were made of various dates. We had a postal card made one year, one card made up for each month of the year. We had twelve different postcards in that year. We sent each postal card to those on our mailing list, which consisted of various registers, of social registers, club lists, private movie listing, patrons that visited the Stork Club who gave their names as potential customers in the future, and who would like to be kept in the limelight of what the Stork Club is doing, and I have a list of some customers, and not only [94] customers, but to the names on our mailing list from the San Francisco area, to whom we sent postcards.

(Deposition of Donald Arden.)

“Q. You sent postcards to all of those people?

“A. Yes.

“Q. What years were those, if you remember?

“A. The exact year,—we sent literature, I would say, monthly, not one specific year, but I can tell you by looking at the cards, the postal cards, what year it was.

“Q. Would this Exhibit 6 for identification refresh your recollection as to the year in which the postal cards for each month that you described were made up and sent out?

“A. Yes. This is for 1941, which I was recalling about the postcard for each month.

“Q. When you say that you sent out literature and postcards to the various names on your mailing list, you don't mean that you sent out on each mailing to each of the 200,000 names on your mailing list? Did you use the entire mailing list for each item?       A. Not for each item, no.

“Q. Were numerous of the items mailed during the past ten years to persons in the San Francisco area?       A. Yes, the majority of the time.

“Q. You have in your hand a group of cards. Do you know how many names and addresses are contained on those cards?

“A. I can count them for you. (Witness doing so.) There [95] are 69 in this list of San Francisco people in the area, meaning four to ten miles in that district, such as Berkeley, Oakland, Alameda, Piedmont, San Mateo, Palo Alto, Burlingame,

(Deposition of Donald Arden.)

which are in the vicinity of ten or twelve miles of San Francisco.

“Q. Were these cards taken from your mailing list records? A. Yes, they were.

“Q. They are the original records as they appear in your mailing list files?

“They are the originals.

“Q. What do these represent?

“A. They represent part of our mailing list of potential visitors to the Stork Club.

“Q. How were these names obtained?

“A. They were obtained from social registers, from San Francisco, also from people who visited the Stork Club, and gave their names to the Stork Club for our mailing list when their pictures were taken.

Q. Do these represent the names of all people to whom you sent publicity matter in the general advertising and promotion of publicity for the Stork Club, in the vicinity of San Francisco?

“A. That is not a complete list. More of a complete list would be if we take the social register of San Francisco, and mailing it direct from that listing. [96]

“Q. Was that done on many occasions during the past ten years?

“A. Yes, that has been done numerous times.

“Mr. Goldwater: I offer the cards for identification.

“(Cards referred to thereupon marked Plaintiff's Exhibit 28 for identification, 11/1/46.)”

(Deposition of Donald Arden.)

At this time I will show Mr. Picard 69 cards which are Plaintiff's Exhibit 28 for identification bearing the date November 1, 1946, which I have produced.

Mr. Picard: Now, if your Honor please, I move that all references to the social register of San Francisco and names taken from the social register of San Francisco be stricken out on the ground that no social register has been produced, and I do not believe there is such a thing.

Mr. Sullivan: I do not know what the Social Register is by hearsay. I may be wrong, but I understand that there is a volume called the Social Register.

The Court: Unless you produce it, it will go out.

Mr. Sullivan: Yes.

We will offer Plaintiff's Exhibit 28 for identification in evidence, your Honor.

The Court: It may be admitted and marked.

(The cards referred to were marked Plaintiff's Exhibit 28.)

The Court: We will take an adjournment now until tomorrow morning. [97]

(An adjournment was here taken until Wednesday, April 2, 1947 at 10:00 A.M.) [98]

Wednesday, April 2, 1947. 10:00 A.M.

The Clerk: Stork Restaurant v. Zahati.

Mr. Sullivan: Ready.

Mr. Picard: Ready.

The Court: You may proceed.

(Deposition of Donald Arden.)

Mr. Sullivan: Resuming the reading of the deposition and the testimony of Mr. Arden, if your Honor please:

“Q. Mr. Arden, has the Stork Club and/or its managing director, in connection with the Stork Club and its employment there, been publicized in any other manner during recent years?

“A. Yes. Take, for example, the radio field. Sherman Billingsley has made personal appearances on such programs which are coast-to-coast, such as Rudy Vallee of NBC, local stations WEA, New York. They have an outlet of 142 stations.

“Q. Can you give the dates upon which such appearance was made?

“A. I have not the date at present, but it can be obtained from the studio. And there was a Duffy's Tavern which was an NBC network, WEA local, an outlet of 132 stations which Billingsley himself appeared in person, and as a guest artist.

Jinx Falkenberg show, WJZ program called “Blind Date” which ran for three years on the NBC network, WJZ local. They mentioned the Stork Club. All these mentioned are where Billingsley appeared and mentioned twice or three times during the program [99] which went coast-to-coast.

“Q. In introducing Mr. Billingsley, in each of these instances, in the course of the program, was it stated by the announcer that Mr. Billingsley was connected with, or was managing director of, the Stork Club in New York?

(Deposition of Donald Arden.)

“A. That is correct. And, another program, which was in 1945 and 1946, which was last New Year’s Eve, and which appeared on the NBC network, WJZ local. That was around-and-around the circuit of a New Year’s Eve, which began in London and then came to New York. Mr. Billingsley had an interview of four minutes. The interview was by Mr. Grant who introduced the Stork Club, Mr. Billingsley, and the activities of the Stork Club and the accommodations there, and what next year might bring.

“Then there were other programs such as the Chesterfield Supper Club, NBC hook-up, WEA local, an outlet of 146 stations. Billingsley was also on that, in person.

“Q. Was the Stork Club mentioned?

“A. The Stork Club was mentioned at least six or eight times, coast-to-coast, over the air.

“Then there were other programs such as coast-to-coast, in which the Stock Club and Sherman Billingsley were mentioned. I can mention many of them, which I would like to.

“Q. All right, do so.

“A. There was the Bing Crosby program, NBC; Frank Sinatra, [100] CBS; Eddie Cantor, Sammy Kaye, Walter Winchell, Jack Benny, Bob Hope—

“Q. In all of these programs were there national hook-ups?

“A. These were all national hook-ups in which the Stork Club is mentioned and Billingsley is mentioned.

(Deposition of Donald Arden.)

“Then, during the war, we had Treasury War Bond Drives, which were on the radio, which were in the Stork Club itself, auctioneering Treasury Bonds for a drive for the government.

“Q. Was that on a national hookup?

“A. That was on a national hook-up.

“Q. Do you know over what locals?

“A. ABC.

“Q. That was broadcast——

“A. ABC is WJZ. Then, also, the magazine sections which are weeklies, such as Look Magazine, Life Magazine, Pic, Click, Newsweek. Billingsley and the Stork Club are mentioned with picture layouts, in such magazines as Life and Look.

“Q. Have you some of these magazines?

“A. I have not got them on display here at the moment. They can be produced, if necessary.

“Then, the monthly magazines, such as Good Housekeeping, Vera Caspary wrote a story called “Murder at the Stork Club.” It gained such reputation that it was now brought into a book form. The Stork Club is mentioned through the entire story.

“Q. Have you got the issues of Good Housekeeping magazine? [101]           A. Yes, I have.

“Q. Are these the ones?           A. Yes.

“Q. Are these the issues of December 1945 and November 1945?           A. That is right.

“Mr. Goldwater: I offer these magazines containing two installments of the story called ‘Murder

(Deposition of Donald Arden.)

at the Stork Club,' and ask they be marked for identification.

“(Issue of Good Housekeeping Magazine, thereupon marked Plaintiff’s Exhibit 29-A for identification; issue of December 1945 thereupon marked Plaintiff’s Exhibit 29-B for identification, 11/1/46.)”

At this time, if your Honor please, not reading from the deposition, but addressing the Court, I have at this time here in court and I will submit to Mr. Picard Plaintiff’s Exhibit 29-A and 29-B for identification which are the issues of Good Housekeeping magazine mentioned by the witness Mr. Arden (showing).

At this time Plaintiff offers in evidence, if your Honor please, Plaintiff’s Exhibit 29-A and Plaintiff’s Exhibit 29-B for identification, and asks that they be duly admitted and marked.

The Court: They may be admitted and marked.

(Two issues of the Good Housekeeping magazine marked [102] Plaintiff’s Exhibit 29-A and 29-B.)

Mr. Sullivan: May I, for the purpose of the record, indicate that the article mentioned by the witness, “Murder at the Stork Club,” is Plaintiff’s Exhibit 29-A beginning at Page 30, and may I also indicate that Plaintiff’s Exhibit 29-B is the last installment of “Murder at the Stork Club” beginning on Page 41.



(Deposition of Donald Arden.)

Resuming the reading of the deposition, if your Honor please:

“Q. You have described this story as having now been published in book form. I show you this volume published by the Detective Book Club, One Park Avenue, New York, purporting to contain three stories, one of which is described as “The Murder in the Stork Club,” by Vera Caspary. Is that the publication in book form to which you referred?”

“A. That is correct.

“Mr. Goldwater: I ask that be marked for identification.

“(Said book thereupon marked Plaintiff’s Exhibit 30 for identification, 11/13/46.)”

Addressing myself to your Honor and not reading from the deposition, I produce here in court Plaintiff’s Exhibit 30 which is the Detective Book referred to by the witness Mr. Arden. There are three stories in this book and this is the last one.

Plaintiff offers Plaintiff’s Exhibit 30 for identification, [103] If your Honor please, and asks that it be admitted and marked.

The Court: It may be admitted and marked.

(Volume published by Detective Book Club is marked Plaintiff’s Exhibit 30.)

Mr. Sullivan: Resuming the reading of the deposition, if your Honor please:

“Q. Is there anything else?”

“A. In that book the author, Caspary, mentions names. Those names happen to be frequent cus-

(Deposition of Donald Arden.)

tomers of the Stork Club. Some of the names are Ed Kelly——

“Q. Who is Ed Kelly?

“A. Mayor Edward Kelly of Chicago. Also Sonia Henie, the skater; Mrs. Woolworth Donahue, society leader; Jack Dempsey, ex-champion of boxing; Mr. and Mrs. John Jacob Astor, one of the leading figures in society; Jim Farley, political leader; Eli Culbertson, bridge expert; Mary Martin, stage and screen star; Mr. and Mrs. Henry Ford II, he is the head of Ford Motor, Limited; Al Jolson, star of screen and stage; Alfred Gwynne Vanderbilt, society leader and national horse sportsman; Carole Landis, screen movie queen; Walter Winchell, tops and commentator of newspaper reporting.

“Q. You mean his column has a wider circulation than any other columnist in the United States?

“A. Yes, sir. Walter Winchell has an outlet of 800 newspapers in his syndication, in which we are mentioned at least [104] four times a week.

“Also J. Edgar Hoover, head of the F.B.I.; Steve Hannegan, tops in the advertising game; George Jean Nathan, movie critic; Julie Hayden, stage star; Ann Sheridan, vivacious screen star; Phil Baker, radio star; and many others.

“Q. Are all of these people who have been mentioned frequent visitors and in regular attendance at the Stork Club?

“A. Yes, we call them steady customers.

“Q. You mean, when they are in New York they

(Deposition of Donald Arden.)

go to the Stork Club regularly for dinner or for supper?      A. That is correct.

“Q. Did you say whether or not this story mentions Sherman Billingsley once or more than once?”

“A. All through the entire story he is mentioned.

“Q. Would you say dozens of times?”

“A. Many more than that. We have a Stork Club book. It is a book that was written by Lucius Beebe.

“Q. Have you got that?”

“A. I have a cover on that, and produced by Rhinehart Company, and the Stork Club is paid 15 per cent for the use of the name ‘Stork Club.’”

“Q. Is that book now in publication?”

“A. That book will be on the stands on November 15th or 20th for sale.

“Q. Is this the book cover that was submitted to the Stork [105] Restaurant, Inc., the operator of Stork Club in New York, for its approval?”

“A. Yes, that is right.

“Mr. Goldwater: I ask that be marked for identification.

“(Book cover thereupon marked Plaintiff’s Exhibit 31 for identification, 11/1/46.)”

At this time, if your Honor please, I will show to Mr. Picard the book cover which is Plaintiff’s Exhibit 31 for identification (showing).

At this time, if your Honor please, plaintiff offers Plaintiff’s Exhibit 31 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Deposition of Donald Arden.)

(The book cover is marked Plaintiff's Exhibit 31.)

Mr. Sullivan: If your Honor please, subsequent to the deposition to which we are referring, I was able to obtain the actual book called "The Murder in the Stork Club." I will show Mr. Picard that book, which was not present at the deposition, and just yesterday I learned from two responsible book shops in San Francisco that they had that book, and I am wondering if we could stipulate, Mr. Picard, that it be introduced in evidence.

Mr. Picard: It may be so stipulated.

The Court: It may be admitted and marked.

(The book, "Murder in the Stork Club," was marked [106] Plaintiff's Exhibit 31-A.)

Mr. Sullivan: Resuming the reading of the deposition:

"A. (Continuing): Then we have the Stork Club picture which Paramount Pictures paid for the rights of using the name 'Stork Club.' That has appeared—and these figures have been as of a month ago, when I called Mr. Wilkie of Paramount Publicity. They told me it appeared in 13,000 theatres and there were, roughly, 16,000 in the United States and Canada.

"Q. In the picture, 'The Stork Club,' do you know what the sets portrayed?

"A. Yes. They were an exact duplicate replica of the Stork Club in New York City.

"Q. Was the front of the Stork Club in New

(Deposition of Donald Arden.)

York City shown in that picture?           A. Yes.

“Q. Also the entrance?

“A. Yes, the entrance, the interior.

“Q. As well as the coatroom?

“A. Yes, and the dancing room——

“Q. Also the kitchen?

“A. The kitchen and the office, and it also had an actor who played the part of Mr. Sherman Billingsley himself.

“Q. Did you see the picture?

“A. Yes, I did.

“Q. Were the sets as reproduced in that picture accurate [107] representations of the Stork Club front, the Stork Club interior, and various parts of it as they exist in the Stork Club in the City of New York?

“A. Yes. In fact, a little incident I can bring up, when they were shooting a scene at the bar, it was brought to the attention that the bar was just two inches higher than the exact duplicate of the Stork Club, and they were in favor of having the exact dimensions, and the entire scene was changed.

“Q. Do you know what movie star appeared in that picture?

“A. Betty Hutton played the leading part.

“Q. Is Miss Hutton a regular patron at the Stork Club?

“A. She is a regular patron, and it is almost a ‘must’ on her list when she is in New York City.

“Q. Was there a very prominent male character in that picture?

(Deposition of Donald Arden.)

“A. Yes, a man who played the part of Sherman Billingsley himself—Bill Goodwin.

“Q. Who was the other principal male character in the picture? A. Barry Fitzgerald.

“Q. Is he also a frequent patron of the Stork Club?

“A. Yes. Barry Fitzgerald is a frequent patron and so is Bill Goodwin.

“Then we had March of Time which made a short called ‘Night Club Room.’ Leonard Lyons, a New York columnist, who [108] has a syndicated column, besides being local New York commentator, spoke over the March of Time. It was a short, and he said the Stork Club is the best and most publicized night club in the entire world.

“Q. Are you familiar with that short, the ‘March of Time’? A. Yes, I have seen it.

“Q. It is a regular release, is it not?

“A. It is a regular release, and which was released by March of Time.

“Q. When was the Stork Club picture released?

“A. In 1945.

“Q. And the March of Time short that you spoke of, when was that?

“A. In 1946. Then we had the Pathe News, another news reel company, which showed exclusive scenes and goings-on at the Stork Club itself, which was released to the general public as a news reel.

“Q. What year was that?

“A. I have not the exact year, but I can get it for you.

(Deposition of Donald Arden.)

“Q. Was that picture called or known as ‘Pathe on Parade’? A. That is correct.

“Q. And that was run for approximately twenty minutes?

“A. That is right. And at the present time, we have a fashion show which is sponsored by the Cosmopolitan Magazine. Newsreels are taken at each meeting, monthly, and they in turn [109] will be shown to the public. That is a new feature.

“Q. Do you know by what news company that will be released?

“A. I think they are dickering right now for the release.

“Q. Can you give us the names—not all—of any number of well known columnists whose regular writings are released in various newspapers in the United States, in so-called columns, who are frequent visitors of the Stork Club?

“A. Yes, I can. Walter Winchell; he is a steady patron, nightly, at the Stork Club. He has an outlet of syndication of his column to 800 newspapers in the United States, and we are mentioned at least four or five times weekly.

“Leonard Lyons, another columnist. He has an outlet syndication of 200 newspapers, in which we are mentioned at least 3 or 4 times weekly.

“Dorothy Kilgallen; we are mentioned in that column four or five days a week.

“Q. In which paper is that?

“A. She writes for the Journal-American, New

(Deposition of Donald Arden.)

York City, a Hearst organization, and distributed by the Hearst newspapers.

“Q. Does her column appear in the various Hearst organization papers throughout the country?

“A. Yes.

“Q. And many others which are not under the Hearst publication control?

“A. That is right. Then we have the society field, which [110] plays a large part in New York in the society world, called Cholly Knickerbocker, who writes for the Journal-American. That, in turn, is released by the Hearst organization to various Hearst newspapers throughout the country.

“Q. Is the column syndicated for other papers as well?

“A. I am not sure of that. Then there is Louis Sobol, who writes for the Journal-American.

“Q. Is that a syndicated column?

“A. For the Hearst publications. There are others like Damon Runyon, Bill Corum, Westbrook Pegler, E. V. Durling, Arthur Bugs Baer, Danton Walker, Nick Kenny, Dan Parker, Barclay Beekman, Nancy Randolph, Charles Ventura, and Jimmy Jemail.

“Q. What paper is he connected with?

“A. He is with the Daily News, which has a circulation of three to four million daily, and five and a half million on Sunday.

“Q. Is he a frequent patron of the Stork Club?

“A. He is a frequent patron, yes.



(Deposition of Donald Arden.)

“Q. Does his column mention the Stork Club frequently, and has it in years past?

“A. In years past, yes. Then we have Ed Sullivan, another columnist; Hedda Hopper, who has a syndicated column.

“Q. Well, now, Mr. Arden, generally what has been the policy of the Stork Club in New York with respect to its relations with these persons who write columns that are circulated [111] so widely in the press of the country?

“A. We give them a free hand while in the Stork Club to visit us at any time of the day without any reservations necessary. They are given items by myself and whoever else they may know in the Stork Club itself.

“Q. I understand your general policy is to interest them in coming as frequently as possible so as to procure as frequent mention of the Stork Club as possible in these widely circulated columns?

“A. That is right.

“Q. In other words, the Stork Club policy is to curry favor with these columnists in the interest of the publicity of the Stork Club?

“A. That is correct.

“Q. Have there been any particular advertising campaigns that the Stork Club has engaged in its publicity program?

“A. Yes. There was a time where, in conjunction with Arthur Kudner, who is head of an advertising firm, and I believe Buick is one of his accounts. There was a car given, and a picture of

(Deposition of Donald Arden.)

that car was taken in front of the Stork Club canopy with Clem McCarthy seated behind the wheel, he being the radio commentator. That was used nationally.

“Q. You mean it was used in the national advertising of the Kudner agency for the Buick automobile?

“A. That is correct. Then Chesterfield cigarettes—they [112] took a picture of one of the hat-check girls in the Stork Club, with a tray of Chesterfields. That campaign was used over the entire country, and posters were made in color, which were used in subways, on newsstands, and drug stores. That also was on a back cover of a program in New York City, which appeared in every theatre.

“Q. Was that photograph used in any national advertising besides the posters that you speak of? In other words, what I mean is, did it appear in any magazine that was nationally distributed?

“A. It appeared in all the main large magazines throughout the entire country.

“Q. Will you name some of them that it appeared in?

“A. In *Cosmopolitan*, *Look*, *Life*.

“Q. You say that showed the Stork Club in New York, or it was taken in the Stork Club?

“A. It was taken at a studio, and it announced Sherman Billingsley's Stork Club in New York City.

“Q. You mean, in the advertising, mention was

(Deposition of Donald Arden.)

made of Sherman Billingsley's Stork Club in New York City?      A. That is correct.

“Q. Was the girl, who appeared in this ad, in uniform?      A. Yes, she was.

“Q. What uniform did she wear?

“A. She wore a black and white outfit which the girls who [113] work at the Stork Club as cigarette girls wore. Her name was Mary Schnier, for identification.

“Q. Do you know whether the Stork Club in New York has been mentioned favorably in many radio programs by prominent radio stars?

“A. Yes, they have on every program, national program—not every program, but the majority of programs.

“Q. Will you name some of the stars, for example, on whose program the Stork Club in New York has been mentioned?

“A. Bob Hope, who was a star on Pepsodent; Bing Crosby, who starred for Kraft Phoenix Cheese; Frank Sinatra for Old Gold Cigarettes; Rudy Vallee, for Drene Shampoo; Eddie Cantor for Pabst Beer; Walter Winchell for Jergens Lotion; Jack Benny for Lucky Strike, and numerous others.

“Q. Do you know of a program of Jimmy Durante, in which the Stork Club was mentioned?

“A. Yes. Jimmy Durante mentioned it many times. I can't recall who the sponsor was.

“Q. Fred Allen?

(Deposition of Donald Arden.)

“A. Fred Allen, the comedian, mentioned it many, many times.

“Q. Mr. Arden, how long have you been in the publicity field? A. Ten years.

“Q. Would you say, from your experience in that business, that there is a publicity value in a night club having its name [114] mentioned in the column of well known columnists, and in news and society items in newspapers and magazines throughout the country? A. Yes, by all means.

“Q. Is there any way that you can measure the value of such mention?

“A. Yes, by clipping service which we subscribe to.

“Q. You mean that would give you, not the dollar value, but what you might term publicity value? A. That is correct.

“Q. In your opinion, has the mention of the Stork Club, in the connections in which you have described it, in the columns, both news columns and publicity columns, in the newspapers, in advertising, in magazines, in newsreel shorts, in the newsreel picture, in the story, ‘Murder in the Stork Club,’ in both Good Housekeeping Magazine and in book form, and all of the other publicity, which you have described of the Stork Club in New York, operated by the Stork Restaurant in New York, the plaintiff in this proceeding, been of great value to the plaintiff herein? A. By all means, yes.”

Mr. Picard: I object to that question on the grounds it is incompetent, irrelevant and immate-

(Deposition of Donald Arden.)

rial, and calling for the conclusion of the witness, a matter for the Court to determine. I move to strike out the answer. [115]

Mr. Sullivan: We resist that motion. If your Honor please, the theory of presenting that evidence through that question and calling for that answer which is in the deposition here is this, that Mr. Arden is a man who has operated in the field of publicity for ten years, and speaking as a publicity expert and speaking from his experience in particular with the public in the Stork Club, he is qualified to testify not only as to his opinion based upon his experience but as to the effect of the value of the publicity of the Stork Restaurant.

The Court: It goes to the eight of the testimony. I will allow it.

Mr. Sullivan: The deposition then says: "Colloquy off the record," and then continues:

"The Witness: I would like to stress a point on pictures.

"Q. You may proceed.

"A. I take many pictures that run into the thousands during the entire year, and those pictures are distributed, and are in demand by photo syndications in New York City and all movie magazines, which pictures appear daily, weekly and monthly. I would say that I send out, at least a thousand pictures a month for publication for reproduction.

"Q. Have you seen a very large percentage of these pictures republished in newspapers and magazines and other publications?

(Deposition of Donald Arden.)

“A. Yes, I have. [116]

“Q. Invariably is credit given to the Stork Club by mention on the republication of these photographs?

“A. All photographs, when used, use the words ‘Stork Club.’

“Q. These practices that you have described, the mentions in publicity, in columns, and by photographs in newspapers, and so forth, matters of just the last year or two, or are you describing the practices in relation to your publicity for the Stork Club over a long period of years?

“A. I would say over a long period of years that practice has been the same.

“Mr. Goldwater: That is all, Mr. Aden.”

Mr. Picard: (Reading.)

“Mr. Frank: I have no questions but I would like to have marked for identification the wine list of the Stork Club which you handed me, Mr. Goldwater.

“Mr. Goldwater: I have no objection to its being marked as Defendants’ Exhibit A for identification.

“(Wine list of Stork Club referred to thereupon marked Defendants’ Exhibit A, for identification, 11/1/46.)”

At this time, if your Honor please, not reading from the deposition, I will offer in evidence the wine list which has been referred to as Defendants’ Exhibit A for identification, and I will hand it to Mr. Sullivan for his examination.

The Court: It may be admitted and marked.

(Deposition of Donald Arden.)

(Wine list of the Stork Club was marked  
Defendant's Exhibit A.)

Mr. Picard: Proceeding with the deposition,  
your Honor:

“Mr. Frank: I would like to have marked a  
menu card of the Stork Club of New York, and  
ask it be marked for identification.

“(Menu card of the Stork Club of New York  
thereupon marked Defendants' Exhibit B for iden-  
tification, 11/1/46.)”

At this time I will offer in evidence Defendants'  
Exhibit B for identification, the menu card re-  
ferred to.

The Court: It may be admitted and marked.

(The menu card was marked Defendants'  
Exhibit B.)

Mr. Sullivan: May I put a witness on, your  
Honor?

The Court: Yes.

Mr. Sullivan: The plaintiff will call Mr. Mac-  
donald.

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C. E. MACDONALD

called for the plaintiff, sworn.

The Clerk: Will you state your name to the  
Court?           A. C. E. Macdonald.

Direct Examination

By Mr. Sullivan:

Q. Where do you live, Mr. Macdonald?

A. 2430 Kirkham Street, San Francisco.

(Testimony of C. E. Macdonald.)

Q. What is your occupation?

A. Manager of the Fox Theater.

Q. The Fox Theater is located in San Francisco?

A. Yes.

Q. Incidentally, how does the Fox Theater with respect to size, compare to other theaters in this vicinity?

A. It is the largest one in this vicinity.

Q. Do you know its capacity as to the size compared to the theaters in the United States?

A. Well, I believe it is approximately between third and fifth in the United States.

Mr. Macdonald, are you familiar with the motion picture known as "Stork Club"? A. Yes.

Q. The motion picture of "The Stork Club," was that exhibited at the Fox Theater?

A. Yes.

Q. During what dates, or between what dates was that picture exhibited at the Fox Theater?

A. From December 20 to December 30, 1945.

Q. And was there a regular and continuous showing of it during that period? A. Yes.

Q. What do you mean by that, Mr. Macdonald? Can you explain that?

A. We opened at 10:45 in the morning and closed at 12:30 or 1:00 o'clock at night.

Q. Did that include Sundays, too? [119]

A. Seven days a week.



(Testimony of C. E. Macdonald.)

Q. I notice that Christmas Day comes in that period. Would that include Christmas Eve?

A. Yes.

Q. Now, Mr. Macdonald, I subpoenaed you to bring here records of the attendance at the Fox Theater with relation to the picture, "Stork Club." Have you brought those records? A. Yes.

Q. Have you those records now in your hands?

A. Yes.

Q. While you are testifying? A. Yes.

Q. Mr. Macdonald, do you keep in the regular course of business records of the admissions at the Fox Theater of the various pictures that are exhibited there?

A. We do it by daily report and by weekly report.

Q. Is it part of the regular course of your business to keep such records? A. Yes.

Q. And are the records which you have there the permanent records of the admissions and the number of admissions to the particular picture at the Fox Theater? A. That is right.

Q. Would you refer, please, to the records which shows the number of admissions to the picture, "The Stork Club," at the [120] Fox Theater in San Francisco during that course of time?

A. We opened on Thursday, December 20, 1945, and during the first week's run, starting Thursday to Wednesday, we run to 59,615 people.

Q. During that period of time, namely, from Thursday, December 20, to Wednesday, December

(Testimony of C. E. Macdonald.)

26, 1945, was the picture "The Stork Club" exhibited during the performance at the Fox Theater?

A. That's right.

Q. Now as to the other records of the showing of this picture.

A. From the 27th to and including the 30th, which was on a Sunday, and then we changed shows on the 31st.

Q. When you say from the 27th you mean of December 1945 to December 30, 1945?

A. Yes.

Q. What was the total number of paid admissions for that period?

A. For that period we played to 25,648.

Q. Have you computed the total number of paid admissions during the showing of the motion picture, "Stork Club," from its first showing on or about December 20 or 21, 1945, to and including December 30, 1945?

A. Yes. 83,729.

Q. And are your records which you have been reading from here [121] of the paid admissions to the motion picture, "The Stork Club," made and kept under your supervision and direction?

A. That is right.

Q. Are the entries therein made within a short time after the figures are compiled from where you compile them?

A. They are compiled on Wednesday and mailed to the office on Thursday.

Q. Where do you get the information for those figures?

A. From our box office reports.

(Testimony of C. E. Macdonald.)

Q. As a matter of fact, do you use the figures which you have just read to us as the basis for the payment of the federal taxes? A. Yes.

Mr. Sullivan: No further questions.

Cross-Examination

By Mr. Picard:

Q. Mr. Macdonald, did you actually see the picture itself? A. Yes, I did.

Q. And in seeing the picture itself, did you observe the Stork Club as it was filmed therein?

A. As I remember, there was a picture of the Stork Club.

Q. Have you ever seen the place of business at 200 Hyde Street in San Francisco which is operated by the defendants in this case?

Mr. Sullivan: Just a minute. I will object to this [122] question and this line of inquiry on the ground it is not proper cross-examination.

The Court: The objection will be sustained.

Mr. Picard: That is all.

Mr. Sullivan: That is all. May the witness be excused, your Honor?

The Court: He may be excused.

Mr. Sullivan: At this time, if your Honor please, plaintiff will offer in evidence the testimony of Mr. Sherman Billingsley which was taken pursuant to notice at the same time and place as the deposition of Mr. Arden which I have heretofore indicated for the purpose of the record, and plaintiff offers said testimony by reading it from the deposition into the record at this time.

“Mr. Goldwater: I will now call Mr. Sherman Billingsley.

“SHERMAN BILLINGSLEY,  
called as a witness on behalf of the plaintiff, having first been duly sworn by the Notary, testified as follows:

“The Notary: Please state your name and address.

“The Witness: Sherman Billingsley, 1130 Park Avenue, New York City.

“Direct Examination

“By Mr. Goldwater:

“Q. Mr. Billingsley, you are associated with the Stork [123] Club? A. Yes, sir.

“Q. In what capacity?

“A. As managing director.

“Q. Have you been the managing director of the Stork Club since August 1934?

“A. Yes, sir.

“Q. Prior to that, were you the managing director of the clubs known as Stork Restaurant Corporation, and 53 East 51st Street Corporation?

“A. Yes, sir.

“Q. Did those two last mentioned corporations operate in New York City a club known as the Stork Club? A. Yes, sir.

“Q. When they ceased business, were all of the assets of the corporation, including the name and good will of the Stork Club, transferred to Hazel Billingsley? A. Yes, sir.

“Q. Is she your wife? A. Yes, sir.

“Q. Is she the sole stockholder of Stork Restau-

(Deposition of Sherman Billingsley.)

rant, Inc., the present operator of the Stork Club?

“A. Yes.

“Q. Were all of these assets transferred to the Stork Restaurant, Inc., in exchange for its capital stock? [124] A. That is right.

“Q. Is the insignia, which appears on the various exhibits here, offered for identification, the insignia presently used by Stork Restaurant, Inc., of the Stork Club in New York? A. Yes, sir.

“Q. Has that insignia been used consistently and continuously since August 1934?

“A. Yes, sir.

“Q. Was it used by the two predecessor companies mentioned prior to that time?

“A. Yes, sir.

“Q. What business is operated by Stork Restaurant, Inc., in New York under the name of Stork Club?

“A. The business is that of the Stork Club.

“Q. What is the nature of the business?

“A. Restaurant where food and drinks are served and dance music is furnished.

“Q. What, in general, is the type of food served and the character of the patrons who frequent the Stork Club?

“A. The very best food, very best liquor, and the very finest people that can afford the prices of the type at the Stork Club.

“Q. Do you make it a practice of catering to such persons and encouraging their return to the club? A. Yes, that is right. [125]

(Deposition of Sherman Billingsley.)

“Q. What methods generally do you use to encourage the return of these people and their constant patronage?

“A. Well, what we do is, we cater to big names in whatever line they are, such as the biggest people from different states and cities to come to the Stork Club, and we take their pictures and we interview them and then, in turn, we send those pictures and their interview to their local papers, and sometimes to syndications that cover other states, too. By doing that, we take for instance, the Governor or Mayor or United States Senator of a state and send his picture from New York City and the Stork Club to his home town or local paper, and 99 chances out of 100 his local paper will see it, and the people who elected him to office see that he goes to the Stork Club in New York and they, in turn, go to the Stork Club.

“Q. Has the Stork Restaurant, Inc., expended large sums of money for publicity in pursuing this policy of advertising and establishing a general reputation?

“A. Yes, it has a tremendous amount of money that has been spent. As a matter of fact, I think we spend too much. I think our value is more in the money we spend that way than what we put in the bank. In other words, I think our good will is worth more than the money.

“Q. More than the tangible assets?

“A. Yes. I think our assets are in good will.

“Q. You think that is your chief asset? [126]

(Deposition of Sherman Billingsley.)

“A. Yes. Every time we turn around we are offered money for the use of the name.

“Q. Mr. Billingsley, when people of prominence do patronize the Stork Club, do you pursue a general policy of complimenting them in some fashion in order to interest them in returning?

“A. Yes, we continually try to build up our good will. We send them in little presents or souvenirs that we can think of. We used to have to think of them, but today the different companies offer them to us.

“Q. And are the numerous favors of one kind and another, such as lipsticks and the automobile tags, and other things that have been marked for identification here, illustrative of the methods you have used in order to continue the interest of your patrons at the Stork Club as a restaurant and night club institution?

“A. Yes. The only difference is the things you have here are very small and minor in comparison to the things we have given out. We have given out automobiles, and we have given out thousand dollar bills, and we have given out five hundred dollar bottles of perfume, and we have given out thousands of thirty-five dollar bottles of perfume which, of course, isn't the amount that we pay for them. We buy it at wholesale prices, but the retail price is \$35. We send to Hollywood, around the holidays, either Christmas, or the like, five hundred or one thousand bottles of perfume that would retail for \$35 a bottle, to the picture stars and writers.

(Deposition of Sherman Billingsley.)

“We send to all the United States Senators for Christmas some kind of Christmas present, and to the Congressmen and all of the Governors in the United States, and all the Mayors of the largest cities. Maybe it will be a pair of red suspenders as a gag, or a necktie, or a tricky tie. We continue to let them know there is a Stork Club in New York City, and we are after them, and we get them.

“Q. As a result of this policy, has the Stork Club succeeded in inducing a very large number of these people to patronize it when they come to New York?

“A. Yes, that is right. I would say that 70 per cent of our business is out of town business, and I would say 30 per cent is a steady New York City business, and most of the New York City business consists of people who live here and come in every night, which makes us sort of a show for the out of town people. In other words, when people come to the Stork Club from out of town, the first thing they want to know is—they want to see something. They heard of Walter Winchell, who is our No. 1 customer, and they want to get a look at him, and want to know where Johnny Weissmuller sat the night he had an argument with some Naval Lieutenant, or which table J. Edgar Hoover sits at; and that is part of the show that they expect. They want to see the so-called debutantes and the society [128] people, and Counts and Lords, and this, that and the other.

“Q. You would say, then, that the Stork Club



(Deposition of Sherman Billingsley.)

receives its patronage not only from local people, but from a substantially large number of people from out of town?

“A. I would say—my guess would be, at least 70 per cent.

“Q. Is it from any particular section of the country that the out-of-towners come?

“A. We get them from the entire United States. We get a lot of people from outside of the United States. We work very hard to get in the California people because of the picture people that are there.

“Q. Have you been present during the testimony which was given here in the depositions of Mr. Farrell and Mr. Arden?      A. Yes, sir.

“Q. Are you thoroughly familiar with the methods which they have described, with the expenditures which they have described, with the various gifts which they have described as having been distributed, and the publicity which they described for which the Stork Club has paid?

“A. Yes, I heard all of them.

“Q. You have general supervision of all of the business at the Stork Club, have you not?

“A. That is right.

“Q. You are its directing head?

“A. Yes. [129]

“Q. And, all of this business, which they have described, including all of its publicity and advertising programs are under your supervision?

“A. That is right.

(Deposition of Sherman Billingsley.)

“Q. And you are familiar with them all?

“A. Yes.

“Q. If you were asked each and all of the questions which were presented to these witnesses, with respect to the expenditures, the distribution and the publicity, newspaper and otherwise, to which these witnesses have testified, would you answer the same as they have answered?           A. Yes.

“Q. Mr. Billingsley, do you know of your own knowledge that all of these gift items, the purchase of which were described by Mr. Farrell, and the cost of which has been testified to, were actually distributed to patrons of the Stork Club in its general advertising and publicity programs?

“A. I directed the giving away of all of that. I told whom to give them to, and when, and how. I saw them given away. Part of them I gave away with my own hands, or I told the Captain to give something away. I watched them give those things away, such as the matches. We used to send a box of those, I think, monthly by Western Union to every star in Hollywood, every producer, writer, and all of the Hollywood people. A box of matches contained 50 packs. They were shipped direct from the Lion Match Company to the Western Union in Hollywood, and the Western Union delivered it to the people, and then Mr. Arden explained the way they were mailed in asbestos packages that the Government permitted through the mail. We send those things all the time. The Stork Club's name is men-

(Deposition of Sherman Billingsley.)

tioned and when we want to remind a customer, we send them a box of matches.

“Q. You are able to testify that all of these expenditures were actually made for the purposes described by Mr. Farrell, and that the articles were actually distributed without compensation to patrons of the Stork Club, or prospective patrons of the Stork Club, in this general publicity and advertising policy of the Stork Club?

“A. Yes, I can swear to that.

“Q. Mr. Billingsley, did you with the assistance of counsel negotiate a contract for the use by DeSilva Productions, Inc., of the name ‘Stork Club’ for the moving picture which was made and distributed under that name?           A. Yes.

“Q. Do you know whether or not a cash consideration was paid under that contract to the Stork Club for the use of its name?           A. Yes.

“Q. Have you any objection to naming the amount that was paid?           A. Not at all. [131]

“Q. What was the amount that was paid?

“A. The first deal we made was for \$100,000, reduced it to \$27,500, which was paid to us. We actually got \$27,500. We got money from the news- actually got \$27,500. We got money from the news- papers for doing two pieces for them.

“Q. Suppose you tell us about it.

“A. That is all there is to it. We didn’t get a lot of money, but we did two big pieces for them.

“Q. What were those pieces?

“A. About night clubs, the history of night

(Deposition of Sherman Billingsley.)

clubs, and how they are run, and their receipts and the taxes they pay, and all that.

“Q. The Stork Club was paid for it?”

“A. I was paid for it, personally.

“Q. Was the Stork Club mentioned in those articles? A. Yes.

“Q. The name ‘Stork Club’ was used?”

“A. Yes. It was mentioned, and it was known that I, who built the Stork Club, did the article.

“Q. You are described as the person in the Stork Club?”

“A. Yes. That is the reason they picked me to do it..

“Mr. Goldwater: That is all.”

Mr. Picard: I will read the cross-examination.

“Cross-Examination

“By Mr. Frank:

“Q. Are you at the present time operating any restaurant [132] or night club in California known as the Stork Club? A. No.

“Q. Are you interested in any restaurant or night club in California at the present time?”

“A. No.

“Q. I am advised by counsel there is a restaurant in Los Angeles, California, which you are interested in. A. No.

“Q. Is my information correct?”

“A. No, it is not.

“(Colloquy off the record.)

“Q. What you just said applies also to any restaurant or night club in California managed, or

(Deposition of Sherman Billingsley.)

in which there is an interest on the part of the Stork Restaurant, Inc.?

“A. Neither myself nor the Stork Restaurant has any interest in anything in California—night clubs, restaurants, or anything.

“Q. During the period before 1934, when the present corporation was formed, the nature of the business conducted by you on behalf of these other corporations was that which was commonly called a speakeasy?

“Mr. Goldwater: That is objected to as immaterial and irrelevant.”

Mr. Sullivan: At this time, if your Honor please, I will object to the question as being immaterial, irrelevant and [133] incompetent as to whether the former place of business was called a speakeasy or not.

The Court: It would not enter into the merits.

Mr. Picard: I do not think it is very material in view of the witness' answer anyway.

The Court: Very well.

Mr. Picard: Shall I read the answer?

The Court: You may.

Mr. Picard: The answer is “No.”

“Q. Were you selling liquor during that period?

“A. I never sold any.

“Q. Was it sold in the premises or part of the business that those two prior corporations conducted?

“Mr. Goldwater: That is objected to.”

Mr. Sullivan: I will add the further objection,

(Deposition of Sherman Billingsley.)

on the ground that it is immaterial, irrelevant and incompetent, that it is not binding on this plaintiff, which is a definite legal entity, and neither of the two corporations that were mentioned by the witness, and I would like to renew my objection further to the last question which had to do with the name of speakeasy being applied to the prior corporation upon the further legal ground that such a question is not binding on this plaintiff, which is a different legal entity than the other two corporations.

The Court: I will sustain the objection. It may go out. [134]

Mr. Sullivan: May the answer of "No" to the other question go out, your Honor?

The Court: That may go out.

Mr. Picard (reading):

"Q. Were there any proceedings of any kind brought by any Government agency against those two corporations, which were the predecessors of the present Stork Restaurant in connection with the business which is operated at the same premises?"

Mr. Sullivan: That is objected to on the ground it is immaterial, irrelevant and incompetent and not binding upon this plaintiff, which is a different legal entity.

The Court: I will sustain the objection.

Mr. Picard (continuing reading):

"What was the result of those charges?"

"Mr. Goldwater: Objected to as immaterial and irrelevant."

(Deposition of Sherman Billingsley.)

Mr. Sullivan: I object to that upon the same grounds as was indicated to the last question.

The Court: Same ruling.

Mr. Picard (reading):

“Q. Have you any recollection as to where those proceedings were brought?”

“Mr. Goldwater: That is objected to as immaterial and irrelevant.”

Mr. Sullivan: Same objection, if your Honor please.

The Court: The same ruling. [135]

Mr. Picard (reading):

“Q. Or, as to what particular time they were brought?”

Mr. Sullivan: The same objection.

The Court: The objection is sustained.

Mr. Picard (reading):

“Mr. Frank: That is all.

“Mr. Goldwater: That is all.” [136]

Mr. Sullivan: If your Honor please, we have concluded the reading of the New York depositions, and I have here a large number of reproductions from newspapers and magazines which I have spoken to Mr. Picard about, and which I think we could agree upon without burdening the court excessively with the establishment of these through witnesses. I have the first group here and I will show them to Mr. Picard. I think I showed them to you yesterday.

Mr. Picard: Yes, I saw them.

Mr. Sullivan: Will it be stipulated, Mr. Picard,

that with respect to these various issues of Time Magazine and Life Magazine, which I have here, and which I have indicated to you, may be introduced into evidence with the same force and effect as if the original records of Time and Life Magazines had been brought here; in other words, will it be stipulated that these are copies of Time and Life Magazines for the dates that they bear on them, and that they were distributed in this area?

Mr. Picard: I will so stipulate subject to the objection that they are immaterial, irrelevant, and incompetent.

Mr. Sullivan: With the exception of that objection, that they may be introduced in evidence?

Mr. Picard: Yes.

The Court: They may be admitted and marked subject to counsel's objection. [137]

Mr. Sullivan: If your Honor please, plaintiff offers in evidence at this time a copy of Time Magazine dated June 5, 1935, and ask that it be admitted and marked Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(Time Magazine dated June 5, 1939, was marked Plaintiff's Exhibit 32 in evidence.)

Mr. Sullivan: In connection with that for the assistance of the court, may I respectfully refer your Honor to page 40 of Plaintiff's Exhibit 32, wherein mention is made of the Stork Club.

At this time, if your Honor please, plaintiff offers in evidence an issue of Time Magazine dated Jan-



uary 15, 1940, and ask that it be duly admitted and marked as Plaintiff's Exhibit next in order.

The Court: It may be admitted and marked.

(Time Magazine dated January 15, 1940, was marked Plaintiff's Exhibit 33.)

Mr. Sullivan: In connection with Plaintiff's Exhibit 33 in evidence, if your Honor please, may I, for the assistance of the court, indicate that reference and mention is made of the Stork Club and Mr. Sherman Billingsley on page 42 of that exhibit.

At this time, if your Honor please, plaintiff offers in evidence a copy of Time Magazine dated September 21, 1942, [138] and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Time Magazine dated September 21, 1942, is marked Plaintiff's Exhibit 34.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 34 in evidence, if your Honor please, may I for the assistance of the court indicate that the reference to the Stork Club appears on page 84 of this issue of Time Magazine.

At this time, if the Court please, plaintiff offers in evidence an issue of Time Magazine dated August 9, 1943, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Time Magazine dated August 9, 1943, is marked Plaintiff's Exhibit 35.)

Mr. Sullivan: Referring to Plaintiff's Exhibit

35 in evidence, if your Honor please, and for the assistance of the court may I indicate that the reference to the Stork Club appears on page 19 of Plaintiff's Exhibit 35 in evidence.

At this time, if your Honor please, the plaintiff offers in evidence an issue of Time Magazine dated March 26, 1945, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Time Magazine dated March 26, 1945, is marked Plaintiff's Exhibit 36 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 36 in evidence, may I, for the assistance of the court, indicate [139] that the reference to Stork Club appears on page 50 of that magazine.

At this time, if your Honor please, plaintiff offers in evidence a copy of Life Magazine dated January 2, 1939, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Life Magazine dated January 2, 1939, is marked Plaintiff's Exhibit 37 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 37 in evidence, if the Court please, may I for the assistance of the court indicate that the reference to or mention of Stork Club appears at page 52 of that magazine.

Plaintiff at this time offers in evidence an issue of Life Magazine dated December 31, 1937, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Life Magazine dated December 31, 1937, was marked Plaintiff's Exhibit 38 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 38 in evidence if the Court please, for the convenience of the court may I indicate that the reference to Stork Club occurs on page 84 of that magazine.

Plaintiff offers in evidence, if the Court please, an issue of Life Magazine dated October 21, 1940, and asks that it be duly admitted and marked. [140]

The Court: It may be admitted and marked.

(Life Magazine dated October 21, 1940 is marked Plaintiff's Exhibit 39.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 39 in evidence, if the Court please, may I indicate that the mention of the Stork Club occurs on page 119 of that issue.

Plaintiff at this time offers in evidence, if the Court please, an issue of Life Magazine dated August 26, 1940, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Life Magazine dated August 26 is marked Plaintiff's Exhibit 40.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 40 in evidence, if your Honor please, may I, for the convenience of the court, indicate that the reference to or mention of Stork Club occurs on page 39 of that issue.

Plaintiff offers in evidence, if the Court please, an issue of Life Magazine dated May 10, 1943, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Life Magazine dated May 10, 1943 is marked Plaintiff's Exhibit 41.)

Mr. Sullivan: For the convenience of the court may I indicate that the reference to or mention of Stork Club appears on page 71 of Plaintiff's Exhibit 41 in evidence. [141]

Plaintiff offers in evidence an issue of Life dated January 17, 1946, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Life Magazine dated January 17, 1946 is marked Plaintiff's Exhibit 42 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 42 in evidence, may I indicate to the Court that the reference or mention of Stork Club appears on page 88 of that exhibit.

Plaintiff offers in evidence, if your Honor please, an issue of Life Magazine dated November 6, 1944.

The Court: It may be admitted and marked.

(Life Magazine dated November 6, 1944 was marked Plaintiff's Exhibit 43 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 43 in evidence, may I particularly indicate to your Honor that there is, beginning at page 119, an entire article in Life Magazine entitled, "Life Visits the Stork Club."

Plaintiff offers in evidence, if the Court please, an issue of Life Magazine dated June 24, 1946 and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Life Magazine dated June 24, 1946 was marked Plaintiff's Exhibit 44.)

Mr. Sullivan: In connection with Plaintiff's Exhibit 44 in evidence, may I indicate to your Honor an advertisement mentioning [142] the name of the Stork Club, and pertaining to Chesterfield Cigarettes, which was mentioned by the witness, Mr. Arden, which appears opposite page 38 in the magazine.

Now, Mr. Picard, I have here the other magazines that I spoke to you about, and may I have the same stipulation with respect to these, in other words, that save for the objection that you referred to as to Time and Life, it will be stipulated that these will be introduced without the necessity of otherwise establishing them and that they were circulated in this area?

Mr. Picard: So stipulated.

Mr. Sullivan: At this time, if the Court please, plaintiff offers in evidence an issue of Collier's Magazine dated October 1, 1938, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Collier's Magazine dated October 1, 1938 is marked Plaintiff's Exhibit 45, in evidence.)

Mr. Sullivan: In connection with Plaintiff's Ex-

hibit 45 in evidence, may I respectfully call your Honor's attention to mention made with respect to Stork Club in an article appearing on page 15 and entitled, "Have you a reservation?" by Clinton Reynolds.

Plaintiff offers in evidence an issue of the American Magazine dated June, 1941, and asks that it be duly admitted and marked. [143]

The Court: It may be admitted and marked.

(American Magazine dated June, 1941, is marked Plaintiff's Exhibit 46 in evidence.)

Mr. Sullivan: Q. In connection with Plaintiff's Exhibit 46 in evidence, may I refer your Honor particularly to the mention made of Stock Club and the photograph in connection therewith which appears in an article beginning on page 44, entitled, "Sherman Packs Them In."

Plaintiff offers in evidence, if the Court please, a copy of the New Yorker, dated March 6, 1943, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(New Yorker dated March 6, 1943, is marked Plaintiff's Exhibit 47 in evidence.)

Mr. Sullivan: In connection with Plaintiff's Exhibit 47 may I refer your Honor to page 56, to an article entitled, "The Army Life. Word From Mr. Billingsley."

Plaintiff offers in evidence a copy of the American Mercury dated September, 1944, and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(American Mercury dated September, 1944, is marked Plaintiff's Exhibit 48 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 48 in evidence, I direct your Honor's attention to an article entitled, [144] "Inside the Stork Club," beginning and appearing on page 357.

Plaintiff offers in evidence copy of the Saturday Evening Post dated June 22, 1940 and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The Saturday Evening Post dated June 22, 1940, is marked Plaintiff's Exhibit 49 in evidence.)

Mr. Sullivan: Referring to Plaintiff's Exhibit 49 in evidence, may I direct your Honor's attention to the same advertisement of Chesterfield Cigarettes put out by Liggett & Myers Tobacco Company, which mentions "Sherman Billingsley's famous Stork Club in New York," appearing on the inside of the pack cover.

Plaintiff offers in evidence, if your Honor please, a copy of Collier's Magazine dated July 13, 1940, and asks that it be admitted and marked.

The Court: It may be admitted and marked.

(Collier's Magazine dated July 13, 1940 is marked Plaintiff's Exhibit 50 in evidence.)

Mr. Sullivan: Plaintiff respectfully indicates to the court the same advertisement which was men-

tioned by the witness Mr. Arden, which appears on the outside of the back cover of that exhibit.

Plaintiff offers in evidence a copy of Look Magazine, dated February 4, 1947, and asks that it be duly admitted and marked. [145]

The Court: It may be admitted and marked.

(Look Magazine dated February 4, 1947 was marked Plaintiff's Exhibit 51 in evidence.)

Mr. Sullivan: In connection with Plaintiff's Exhibit 51 in evidence, we respectfully call your Honor's attention to an article beginning on page 62, entitled, "The Truth About the Stork Club."

Now, Mr. Picard, I think you have seen these photographic reproductions which I had made by the printer of the San Francisco Call.

The Court: Why can't they go in as one exhibit?

Mr. Sullivan: Yes, I had done this before I left my office this morning in order to assist your Honor. I had an index prepared which I will have out here. May I when that index comes out attach the index?

The Court: Very well.

Mr. Sullivan: Mr. Picard, will it be stipulated that these reproductions, photographic reproductions of the column of Walter Winchell, from the San Francisco Call-Bulletin may be admitted in evidence, with the full force and effect as if the original newspapers were brought here to court?

Mr. Picard: Yes, subject to the objection that they are immaterial, irrelevant, and incompetent.

Mr. Sullivan: Will it *be that* the San Francisco



Call was circulated in this area and has been for many years? [146]

Mr. Picard: So stipulated.

Mr. Sullivan: Plaintiff offers in evidence, if the Court please, nine sheets of photograph reproductions of articles of Walter Winchell from the San Francisco Call, all of them in the year 1938, and ask that they be admitted and marked Plaintiff's Exhibit next in order.

The Court: They may be admitted and marked.

(Photographic reproductions of articles of Walter Winchell from the San Francisco Call in the year 1938 marked Plaintiff's Exhibit 52, in evidence.)

Mr. Sullivan: May we, with respect to these exhibits, if your Honor please, have it understood, and Mr. Picard, may we have it understood that the respective dates which appear on the sheets which were stamped on there by the printer from the various newspapers represent the dates of the particular articles?

Mr. Picard: So stipulated.

Mr. Sullivan: May I indicate to the court that in some of these articles the dates appear on the headline, in others it appears in longhand writing of the printer on the reverse side of the article, and on the larger sheets the date has been stamped on with a date stamp.

Plaintiff offers in evidence 12 sheets of photostatic reproductions or prints or photographic reproductions of the column of Walter Winchell from

the San Francisco Call-Bulletin for [147] the year 1939, and asks that they be duly admitted and marked.

The Court: They may be admitted and marked.

(Photographic reproductions of column of Walter Winchell from San Francisco Call-Bulletin for year 1939 are marked Plaintiff's Exhibit 53 in evidence.)

Mr. Sullivan: Plaintiff offers in evidence 9 sheets of photographic reproductions of the column of Walter Winchell in the San Francisco Call-Bulletin, appearing in the San Francisco Call-Bulletin on the dates designated as stated, and ask that they be marked Plaintiff's Exhibit next in order.

The Court: They may be so marked.

(Photographic reproductions of column of Walter Winchell in the San Francisco Call-Bulletin are marked Plaintiff's Exhibit 54, in evidence.)

Mr. Sullivan: Plaintiff offers in evidence four sheets of photographic reproductions of columns of Walter Winchell "On Broadway," appearing in the San Francisco Call-Bulletin on the dates indicated as stated, and ask that they be duly admitted and marked as one exhibit.

(Photographic reproductions of column of Walter Winchell "On Broadway" appearing in San Francisco Call-Bulletin are marked Plaintiff's Exhibit 55, in evidence.)

Mr. Sullivan: Plaintiff offers in evidence three sheets of photographic reproductions of the column entitled "Winchell On Broadway," appearing in the San Francisco Call-Bulletin, [148] and ask that they be duly admitted and marked.

The Court: They may be admitted and marked.

(3 sheets of Photographic Reproductions of the column entitled "Winchell on Broadway, appearing in San Francisco Call-Bulletin were marked Plaintiff's Exhibit 56 in evidence.)

Mr. Sullivan: If your Honor please, it was found more convenient to take a column and photograph it and transfer it with respect to the following sheets, which I am going to ask be admitted in evidence.

I will now offer a set of columns of Walter Winchell, shown in 5 columns on one photographic reproduction, and bearing an identifying mark, a red No. 6 on the reverse side and ask that they be marked as Plaintiff's Exhibit Next in order.

The Court: They may be admitted and marked.

(Photographic reproduction of Walter Winchell's columns bearing the identifying mark "6" on the reverse side is marked Plaintiff's Exhibit 57 in evidence.)

Mr. Sullivan: Plaintiff offers in evidence a large photographic reproduction of 7 columns of Walter Winchell "On Broadway" from the San Francisco

Call-Bulletin on the dates indicated and bearing an identifying mark of "7" on the reverse side thereof, and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Large photographic reproductions of Walter Winchell's columns bearing identifying mark "7" on the reverse side is marked Plaintiff's Exhibit 58 in evidence. [149])

Mr. Sullivan: Plaintiff offers in evidence and asks that it be duly admitted and marked a photographic reproduction of five columns of Walter Winchell On Broadway, appearing in the San Francisco Call-Bulletin on the dates indicated, and which sheet bears an identifying mark of the figure "8" on the reverse side thereof.

The Court: It may be admitted and marked.

(Photographic reproduction of 5 columns of Walter Winchell on Broadway, in San Francisco Call-Bulletin, bearing the identifying mark of the figure "8," marked Plaintiff's Exhibit 59 in evidence.)

Mr. Sullivan: Plaintiff offers in evidence a photographic reproduction of 5 columns of Walter Winchell On Broadway appearing in the San Francisco Call-Bulletin on the date indicated on the reproduction and bearing the identifying mark "9" on the reverse side thereof, and ask that it be admitted in evidence.

The Court: It may be admitted and marked.

(5 columns of Walter Winchell On Broadway in San Francisco Call-Bulletin bearing the identifying mark "9" is marked Plaintiff's Exhibit 60 in evidence.)

Mr. Sullivan: Plaintiff offers in evidence photographic reproduction of 6 columns of Walter Winchell On Broadway appearing in San Francisco Call-Bulletin on the dates therein indicated, and bearing the further identifying mark "10" on [150] the reverse side thereof and ask that it be admitted and marked.

The Court: It may be admitted and marked.

Photographic reproduction of 6 columns of Walter Winchell On Broadway appearing in San Francisco Call-Bulletin with identifying mark "10" on the reverse side is marked Plaintiff's Exhibit 61 in evidence.)

Mr. Sullivan: Plaintiff offers in evidence a photographic reproduction of 6 columns of Walter Winchell appearing in the San Francisco Bulletin on the dates indicated on the photographic reproduction and bearing the further identifying mark of a red figure "11" on the reverse side thereof and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Photographic reproduction of 6 columns of Walter Winchell appearing in the San Francisco Call-Bulletin bearing the identification

mark of "11" on the reverse side thereof, marked Plaintiff's Exhibit 62 in evidence.)

Mr. Sullivan: Plaintiff offers in evidence a photographic reproduction of 7 columns of Walter Winchell appearing in the San Francisco Call-Bulletin on the dates indicated on the photographic reproduction and bearing the further identification mark on the reverse side thereof of a red figure "12" and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Photographic reproduction of 7 columns of Walter Winchell appearing in San Francisco Call-Bulletin bearing the identifying mark on the reverse side of the figure "12" marked as Exhibit 63.)

Mr. Sullivan: At this time, if your Honor please, plaintiff offers in evidence the testimony of George A. Smith, which was taken by deposition duly noticed. The deposition was taken at our office, namely, the office of Malone & Sullivan, Room 849 Mills Building, San Francisco, on Friday, February 21, 1947, before George Gillin, a Notary Public. I do not think it will be necessary, will it, Mr. Picard, to read the three and a half or four pages preceding the testimony, relative to the stipulation of counsel?

Mr. Picard: I will be willing to stipulate that the deposition may be offered and deemed as read.

Mr. Sullivan: I do not want to burden the court with reading it, but on the other hand I will do

whatever the court desires. I have always felt it would be better to have depositions read.

The Court: You may read it.

Mr. Sullivan: May the record show that it was agreed that this deposition did not have to be signed, read, or corrected by the witness, and that stipulation was entered into by both parties and made a part of the record.

Mr. Picard: That is correct. It was taken by stipulation [152] at the date set out, at the convenience of counsel for plaintiff.

Mr. Sullivan: And that a waiver was made pursuant to the Rules of Civil Procedure with respect to the waiver of signature, by both the witness and by counsel?

Mr. Picard: So stipulated.

Mr. Sullivan: May the record show that I now offer in evidence as testimony on behalf of the plaintiff the testimony of George A. Smith. I will read starting on page 4:

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“GEORGE A. SMITH,

called as a witness on behalf of plaintiff, and having been first duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

Mr. Sullivan: Q. Will you state your full name?

A. George A. Smith.

(Deposition of George A. Smith.)

Q. What is your present address?

A. Home address?

Q. Yes.

A. 915 North Crescent Drive, Beverly Hills.

Q. Your occupation is what?

A. Sales Manager.

Q. You are connected with what firm or corporation?

A. Paramount Pictures, Incorporated.

Q. What is your position with the Paramount Pictures, Incorporated? [153]

A. I supervise the distributing branches of our company in the western part of the United States, everything west of Chicago.

Q. Would that mean that you cover the territory of all the States west of Chicago?

A. Yes, sir.

Q. Do you cover in addition to any of that territory on continental United States any of the territory of the United States outside?

A. Alaska and the Hawaiian Islands.

Q. May I ask how long you have been associated or connected with Paramount Pictures?

A. Celebrating my twenty-fifth anniversary this year.

Q. Have you, during that time devoted a good portion of it to sales work?      A. Entirely.

Q. How long have you been the Western Division Sales Manager for Paramount Pictures?

A. 6 years this month.

Q. May I ask your office address?



(Deposition of George A. Smith.)

A. 1513 West Twentieth Street, Los Angeles.

Q. Do you also have another office address in connection with this work?      A. I do. [154]

Q. What is that, please?

A. In New York, 1501 Broadway.

Q. Are you familiar with a motion picture, or a motion picture production, called *The Stork Club*.

A. I am.

Q. Who produced that picture?

A. Paramount.

Q. What, approximately, was the cost of it?

A. The last cost sheet I saw ran close to \$1,700,000.

Q. Who distributed *The Stork Club*?

A. Paramount.

Q. Do you know who the stars were in that picture?

A. Yes, sir, Betty Hutton and Barry Fitzgerald.

Q. Did you ever see the motion picture called *The Stork Club*?      A. Yes, sir.

Q. Incidentally, have you ever been in and upon the premises known as *The Stork Club*, which is located at 3 East Fifty-third Street, in the City of New York?      A. Many times.

Q. Are you familiar generally with the interior of those premises?      A. Very.

Q. When you saw the motion picture called *The Stork Club*, did you see any scenes or replicas of scenes of the interior of a place called in the picture *The Stork Club*? [155]

(Deposition of George A. Smith.)

A. Yes, sir. It was an exact replica, made from photographs.

Q. Did you ever see the set in *The Stork Club*?

A. Yes, sir. I happened to be on the stage when they were actually making the picture.

Q. Where were they?

A. In our studio in Hollywood.

Q. As you saw the sets on that occasion, did they appear to you to be fair and accurate replicas of the interior of the *Stork Club*, and identical? By the *Stork Club*, I mean the place located at 3 East Fifty-third Street, in New York City.

A. Yes.

Q. When was the motion picture called *The Stork Club* released, if you know?

A. Our national release date was December 28, 1945.

Q. After it was released, was it distributed throughout the United States? A. Yes, sir.

Q. Can you state without referring to the records which you have brought here, just as a preliminary, can you state as to the number of States in which *The Stork Club* motion picture was distributed?

A. All States of the United States, Alaska, and Hawaiian Islands.

Q. You have brought with you, I see, certain records? A. Yes, sir. [156]

Q. What records have you brought, Mr. Smith?

A. I have, first, the sales classifications of all

(Deposition of George A. Smith.)

of the pictures that were released by Paramount during that particular releasing year, 1945-46. I have a weekly report—a liquidation report showing the number of theatres, nationally, in which all of the pictures released during that year were played, and the accumulated dollar total film rental for all of the pictures for which all of these engagements, and I have—That report is for the week ending February 18. I have for the current week ending February 22—this report being prepared several days in advance, a record from the San Francisco branch showing the number of exhibition of Stork Club in the Northern California territory serviced by our San Francisco Branch, and the total dollar film rental from the exhibitions of The Stork Club in the Northern California territory.

Q. Mr. Smith, I will ask you at this time to refer to the document which relates to the nation-wide distribution of pictures which were released during the year 1945 and—

A. (Interrupting): 1945-46.

Q. 1945-46. What is the title of that document? Will you please read it there?

A. 'National Picture Report, United States Only, For 1945-46 Productions, Group A-5.'

Q. And will you read the parenthesized caption under the title, [157] please?

A. 'Paramount Pictures, Incorporated, and Paramount Film Distributing Corporation.'

Q. Is that the document to which you just referred in your testimony as indicating the nation-

(Deposition of George A. Smith.)

wide distribution or exhibition of certain pictures?

A. Yes, sir.

Q. Is this document one of the records of Paramount Pictures, Incorporated? A. Yes, sir.

Q. Is it a record made in the regular course of business of Paramount Pictures, Incorporated?

A. Yes, sir.

Q. And is it a part of the regular course of business of the Paramount Pictures, Incorporated, to make records such as that which you have before you at the time that the various data comes into Paramount Pictures, or within a reasonable time thereafter?

A. This is summarized each week for the previous week's business and is a weekly report issued to the division manager.

Q. This would be the latest report and summary?

A. Yes, sir.

Q. I notice on this document which you have before you that you have certain columns with certain captions on them. Will you please, for the purpose of the record, explain what [158] these columns are, by just reading them? Don't explain them in your own language.

A. First, we have the production number of each picture.

Q. That is, it appears on here as 'production number'? A. Production number.

Q. The next column reads what?

A. Code title assigned to each picture for con-

(Deposition of George A. Smith.)

venience in wiring about it. Instead of wiring the full title, we assign a code to each picture.

Q. That reads, 'Code Title'? A. Yes.

Q. What does the next column read?

A. 'Stars.' The leading players in the cast.

Q. The next column, what does that read?

A. Under 'Current week,' and the week is dated, and sub-headings under 'Current week' would be the number of shipments during that current week: The net dollar rentals during that week; and the dollar credits during that week.

Q. Will you please read the exact column description which you find in that column or set of columns you have just testified to?

A. As to——

Q. Just what it says here with respect to 'Current week.'

A. I don't understand the question.

Q. Will you read what appears here, beginning with 'Current [159] week,' and coming down to the end of the column.

A. The number of shipments, the net dollar rentals, and the dollar credits.

Q. Over those columns appear the words 'Current week, February 15'?

A. February 15, 1947.

Q. That is correct? A. Yes.

Q. The next column reads what?

A. 'Accumulated to February 15, 1947.'

Q. The next column?

A. Under 'Accumulated' we have the number of

(Deposition of George A. Smith.)

shipments, and the net dollar rental, and the dollar credits.

Q. Mr. Smith, do you find any entries made with respect to the nation-wide distribution or exhibition of the motion picture called The Stork Club on the document to which you have just referred?

A. Yes, sir.

Q. Will you point out to me, please, where that appears?           A. (Pointing.)

Mr. Sullivan: Let the record show that the witness has indicated the eighth line down on the document to which he is referring.

Q. Mr. Smith, I will ask you to read the entry which you have just pointed out, adding no words of your own, but merely [160] giving the columnar heading first and the entry as it appears opposite the picture of the Stork Club."

Mr. Picard: I will object to that question on the ground that the proper foundation has not been laid for it, that it is taken from a book which is obviously according to the witness' own testimony not a book of original entry, and that the witness has not testified that it was made under his supervision.

The Court: The objection will be sustained.

Mr. Sullivan: If your Honor please, I would like to refer your Honor to the title of the United States Code which authorizes the admission in evidence of such a record.

The Court: The objection goes to the foundation for the testimony.

Mr. Sullivan: That is what I am speaking of, the foundation.

The Court: It is time to take a recess now and you can take it up when you come back.

(A recess was here taken until 2:00 o'clock p.m.)

Afternoon Session, 2:00 P.M.

Mr. Sullivan: If your Honor please, I have a short witness, and may I, with the consent of your Honor and Mr. Picard, put him on out of order?

Mr. Picard: That is agreeable.

The Court: Very well.

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EMMETT KEEFE

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the Court?

A. Emmett Keefe.

Q. (By Mr. Sullivan): What is your address?

A. 55 St. Elmo Way.

Q. By whom are you employed?

A. Twentieth Century Fox Film Corporation.

Q. Is that corporation engaged in the production and distribution of motion pictures?

A. Yes, it is.

Q. Are you familiar with a motion picture known as March of Time's Night Club Boom?

A. Yes, I am.

(Testimony of Emmett Keefe.)

Q. Who produced that picture?

A. That was produced by De Rochemont.

Q. Who distributed that picture? [162]

A. Twentieth Century Fox Film Corporation.

Q. Is it still being distributed?

A. Yes, it is.

Q. Can you tell us what the picture generally has to do with?

A. The picture generally deals with the boom of night clubs in New York City and shows many of the different night clubs in New York City.

Q. Have you seen the picture, Mr. Keefe?

A. Yes.

Q. Does that picture show anything purporting to be scenes having to do with the Stork Club of New York City?      A. Yes, it does.

Q. Now, has that picture been released in this area?      A. Yes, it has.

Q. And distributed in this area?      A. Yes.

Q. Are you able to state at how many theatres, approximately, it has been distributed?

A. I would say approximately 390.

Q. Could you indicate to his Honor generally the area through which that picture has been distributed?

A. Yes, the distribution out of San Francisco goes as far north as Klamath Falls, takes in parts of Nevada, including Yerrington, and goes as far down as a few miles above Bakersfield.

Mr. Sullivan: If your Honor please, may I have



(Testimony of Emmett Keefe.)

this [163] marked as Plaintiff's Exhibit for identification next in order?

The Court: Very well.

(Exhibitors' Campaign Sheet was marked Plaintiff's Exhibit 64, for Identification.)

Q. (By Mr. Sullivan): Mr. Keefe, I show you Plaintiff's Exhibit 64 for Identification, which purports to be a document entitled "Exhibitors' Campaign Sheet," and I will ask you if you have seen this document before.

A. Yes, I have.

Q. You gave it to me, did you not?

A. Yes, I did.

Q. Is that document distributed by Twentieth Century Fox, to your knowledge, in connection with the picture, "March of Time"?

A. It is distributed out of Chicago from the March of Time office, and our office here receives a supply which we give to our exhibitors.

Q. You know with respect to your supply it is distributed out of your office? A. Yes.

Q. This comes from the files of your supply?

A. Yes.

Mr. Sullivan: I offer this in evidence, may it please your Honor.

The Court: It may be admitted and marked.

(Plaintiff's Exhibit 64 for Identification was thereupon received in evidence.) [164]

Mr. Sullivan: No further questions.

Mr. Picard: No questions. May the witness be excused?

The Court: Yes.

Mr. Sullivan: At the time we introduced the photographic reproductions of Winchell's columns in the San Francisco Call-Bulletin, which I am advised have exhibit numbers from 52 inclusive to 63 inclusive, I indicated to your Honor that for the convenience of the court and the record that I would furnish typewritten indexes indicating the various sheet numbers and the paragraphs in which I mentioned there were references to the Stork Club. I will show them to Mr. Picard and may I hand them to Mr. Welsh and may he affix those to the respective exhibits?

The Court: Very well.

Mr. Sullivan: Your Honor, before the noon recess, had before you an objection of Mr. Picard to the testimony of Mr. George Smith that was pertinent to the establishment of certain records that Mr. Smith brought to the deposition with him, and had to do with this motion picture of The Stork Club. Mr. Picard's objection, if I recall, your Honor, was directed to the fact that the witness had not testified that the records were permanent entries, or the entries were not made under the supervision and direction of the witness.

I would like at this time to answer Mr. Picard's objection and to advise the court, if I may, respectfully, of the section [165] which I had in mind in the United States Code.

The Court: Read the question in the deposition to which he objected.

Mr. Sullivan: The question, your Honor, to which Mr. Picard objected was on page 11:

“Q. Mr. Smith, I will ask you to read the entry which you have just pointed out, adding no words of your own, but merely giving the columnar heading first and the entry as it appears opposite the picture of the Stork Club.”

I would like to point out to your Honor that before I asked Mr. Smith that question I asked this question of Mr. Smith—

Mr. Picard: Where are you starting?

Mr. Sullivan: I am now referring to page 9 of the deposition at line 4:

“Q. Is that the document to which you just referred in your testimony as indicating the nation-wide distribution or exhibition of certain pictures? A. Yes, sir.

Q. Is this document one of the records of Paramount Pictures, Incorporated?

A. Yes, sir.

Q. Is it a record made in the regular course of business of Paramount Pictures, Incorporated? A. Yes, sir. [166]

Q. And is it a part of the regular course of business of the Paramount Pictures, Incorporated, to make records such as that which you have before you at the time that the various data comes into Paramount Pictures, or within a reasonable time thereafter?

A. This is summarized each week for the

previous week's business, and is a weekly report issued to the Division Manager.

Q. This would be the latest report and summary?  
A. Yes, sir."

The Court: What is your objection?

Mr. Picard: My objection, if your Honor please, was that it is not the original entry. He says it is summarized each week for the previous week's business, summarized from original records. Secondly, he does not testify that the books or records were made under his supervision.

Mr. Sullivan: Are you through?

Mr. Picard: Yes.

Mr. Sullivan: This is the answer I was prepared to make to Mr. Picard's objection. As your Honor heard my preliminary questions, you can appreciate that I looked up the section before I examined the witness. In 1936, your Honor, Congress enacted the so-called Federal Shop Book Rule of Evidence, which was enacted for various reasons, upon the insistence of the United States Attorney General because of the technical objections [167] somewhat like those of Mr. Picard's in some criminal cases, and they ended up with the general rule that all he had to establish from a witness are the questions and answers to the questions that I asked the witness, and the objection does not go to the admissibility but the weight.

The Court: The books were there?

Mr. Sullivan: The records were there and photographic reproductions are attached to the deposi-

tions, and secondly, I say, your Honor, that that is a proper foundation, because of the language of this section. May I read it to your Honor?

The Court: Certainly.

Mr. Sullivan: I am reading now from Section 695 of 28 U. S. Codes, which was enacted in 1936. This does not appear in the bond volume but in the Supplement:

“In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible as evidence of said act, transaction, occurrence or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memoranda or record at the time of such act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of [168] the making of such writing or record, including lack of personal knowledge by the entrant or maker may be shown to effect its weight but they shall not affect its admissibility.”

The Court: You refer to some memoranda that were not available?

Mr. Sullivan: Oh, no, I had it right there, and they are attached to the deposition, and I have duplicate photostats to introduce here.

The Court: This morning I thought it referred to records that were being testified to that were not available.

Mr. Sullivan: No, what happened at the deposition was, Mr. Keith, an associate of Mr. Picard, was present, and the witness was some distance from his office, and had these records, and asked if he could take them back with him, and so I wanted to introduce the evidence by having him read them into the record, and then at the end of the deposition, Mr. Keith and I agreed that photostats might be made and the originals sent back to the witness.

The Court: That goes to the weight of the testimony.

Mr. Picard: It would seem that way.

Mr. Sullivan: Will your Honor excuse me a moment?

The Court: Yes.

Mr. Sullivan: If your Honor please, yesterday Mr. Picard, I think, questioned the existence of a social register, and your [balance of paragraph missing]

MARIE SHANNON

called as a witness on behalf of plaintiff, sworn.

Q. (By the Clerk): Will you state your name to the court?           A. Marie Shannon.

Direct Examination

By Mr. Sullivan:

Q. You are employed by the San Francisco Public Library?           A. Yes, I am.

Q. And you are at the main branch of that library, are you?           A. Yes.

Q. A subpoena was served on the main library today to bring to court the 1941 and 1935 Social Registers of San Francisco?           A. Yes.

Q. Isn't that correct?           A. Yes.

Q. Have you brought those two volumes with you?           A. Yes.

Q. Will you kindly show them to his Honor?

A. Yes (handing).

Q. These books which you have shown to his Honor are a part of the regular records of the library in San Francisco, are [170] they not?

A. Yes.

Mr. Sullivan: Might I call your Honor's attention to the fact that these are books published by the Social Register, 381 Fourth Avenue, in New York City, so they would probably be available to the plaintiff. I introduce these two because they were mentioned I think by the witness Donald Arden and Mr. Picard expressed some skepticism.

(Testimony of Marie Shannon.)

Q. You have a record of complete social registers, haven't you, for some years?

A. I think we would have, I don't know.

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Mr. Sullivan: I will now continue with the reading of Mr. Smith's deposition.

“Q. Mr. Smith, I will ask you to read the entry which you have just pointed out, adding no words of your own, but merely giving the columnar heading first and the entry as it appears opposite the picture of the Stork Club.

“A. ‘Production No.: 4507. Code Title: Stork. Stars: Hutton, Fitzgerald. Current Week: February 15, 1947. Number of shipments: 32. Net dollar rentals: \$540.50. Dollar credits: \$35. Accumulated to February 15, 1947. Number of shipments: 14,457. Net dollar rentals: \$3,018,676.26. Weeks old, based upon national release date: 59.’

“Q. In your response to the last question, Mr. Smith, [171] under the word ‘Code Title,’ you mentioned and read ‘Stork.’ Does that identify the picture The Stork Club?

“A. That was the abbreviated title for Stork Club, yes, sir.

“Q. Does this record and this entry which you have just read here into the record, does that indicate the number of exhibitions that have been made throughout the United States?

“A. Yes, sir.



(Deposition of George A. Smith.)

“Q. What is that number, again?”

“A. 14,457.

“Q. You mentioned a little while ago that these nation-wide sheets on exhibit are accumulated to date. A. Yes.

“Q. Does that record show with respect to the picture The Stork Club the number of weeks that have elapsed since its release and for which this accumulation obtains? A. 59 weeks.”

Mr. Picard: If your Honor please, I object to this evidence as immaterial, irrelevant and incompetent, and that it refers to matters which have occurred since the filing of the complaint.

Mr. Sullivan: If your Honor please, from reading the cases on unfair competition, here is my understanding, that the plaintiff claiming infringement of unfair trade practice can show the continuance of the practice even after the suit has been filed.

The Court: I will allow it.

Mr. Sullivan (reading):

“Mr. Sullivan: So that the record may be clear, let the record show that in asking the witness, George A. Smith, to read into evidence the entries with respect to The Stork Club picture from the document from which he has been testifying, that the plaintiff in this case offers the entries into evidence on behalf of the plaintiff.

“Mr. Keith: Wait a minute. That will be objected to on the ground no sufficient foundation has been laid.

(Deposition of George A. Smith.)

“Mr. Sullivan: Q. Mr. Smith, have you here present in the room where this deposition is being taken, a document to which you have heretofore referred in your testimony which has to do with record of the exhibitions of the motion picture *The Stork Club* in the San Francisco area?”

“A. Yes, sir.

“Q. Which record is that, Mr. Smith?”

“A. This sheet.

“Q. So that this sheet may be designated, will you read the caption at the top of the sheet, please?”

“A. ‘Current Week Ending February 22, 1947.’”

“Q. I notice that there is a caption at the bottom of the sheet, Mr. Smith. Will you read that, please?”

“A. ‘San Francisco Exchange Picture Report.’”

“Q. Is this document which you have here present and which is before you one of the records of the Paramount Pictures, Incorporated?”

“A. Yes, sir.

“Q. Is this record made in the regular and ordinary course of business of Paramount Pictures, Incorporated? A. Yes, sir.

“Q. Has it been a part of the regular course of business of the Paramount Pictures, Incorporated, to make records such as that which you have indicated and which is before you at the time that the information is obtained, or within a reasonable time thereafter?”

“A. It is prepared each week for the previous week’s business.

“Q. Mr. Smith, does the record which is before

(Deposition of George A. Smith.)

you show any information with respect to the exhibition of the motion picture *The Stork Club*?

“A. Yes, sir.

“Q. Will you point it out?

“A. In the 60 weeks accumulated since the release of the picture, to February 22, 1947.

“Q. Let me interrupt you. You have just read from the document in the upper right-hand corner.

“A. Yes, sir.

“Q. That reads: ‘60 weeks accumulated to February 22, [174] 1947,’ is that correct?

“A. Yes, sir.

“Q. There are certain columns underneath that, are there not?           A. Yes, sir.

“Q. The columns are labeled, are they?

“A. Yes, sir.

“Q. Would you please read from this document the columnar heading and the entries with respect to the motion picture, *The Stork Club*?

“A. The first column is, ‘Circuit or Zone,’ and under that column the names of the important circuit accounts are listed. In the second column, the heading is, ‘Number of Shipments,’ with sub-heading, ‘Screenings and other.’ The third column ‘Total net dollar film rental billings.’ The next column, ‘Dollar bill adjustments.’ The next column, ‘Checking costs,’ with two sub-headings, ‘No. of days checked,’ and ‘Dollar cost.’ And the next column is, ‘Co-op,’ meaning cooperative advertising.

“Q. Mr. Smith, I will ask you to examine this document with the end in view of ascertaining

(Deposition of George A. Smith.)

whether there are any entries for the distribution of the picture called The Stork Club.

“A. Yes, there are.

“Q. Will you read those entries, first reading the title of the column under which they appear, and then reading the [175] entries.

“A. Under ‘Number of shipments: 532.’ Under ‘Total net dollar film rental billings: \$126,588.89.’ Under ‘Dollar billing adjustments: \$57.50.’ Under checking costs: No. of days checked 33; Cost: \$339.81.’ Under ‘Co-op Advertising,’ one engagement, the dollar amount was \$316.56.

“Q. Is there an entry on this document for the number of exhibitions of the picture The Stork Club?

“A. The one I have already read, 532.

“Q. 532? A. Yes, sir.

“Q. Does that mean there were 532 showings in this area? A. Yes, sir.

“Q. What area would that be, from your knowledge of the——

“A. (Interrupting): Northern California. The border line—the dividing line from Southern California, being just north of Bakersfield, extending to the northern border of California, and overlapping into a very small part of Southern Oregon, Medford, and Ashland, and Lakeview, I think, are the only towns, and a few towns in Western Nevada.

“Mr. Sullivan: So that the record will be clear on the introduction of this evidence from the document which the witness has just testified with re-

(Deposition of George A. Smith.)

spect to, plaintiff offers in evidence the entries which Mr. Smith has just read into evidence, by reading from this document which is here present in the [176] deposition room.

“Mr. Keith: To which objection is made on the ground no sufficient foundation has been laid for the admission into evidence of any of the entries testified to by this witness.

“Mr. Sullivan: Q. Have you another document here present which you will refer to?

“A. Yes, sir, the final sales classification sheet.

“Q. The words, ‘Final Sales Classification Sheet,’ appear at the top of this document?

“A. Yes, sir.

“Q. Underneath I note the words, ‘Group A-5, Season 1945-46.’ A. Yes, sir.

“Q. What does that mean?

“A. That means that this sales classification covers all of the motion pictures that we released during our 1945-46 season.

“Q. Is that group designation called ‘Group A-5’ the same designation as appeared on the document which you have referred to in connection with the nation-wide distribution? A. Yes, sir.

“Q. Group A-5. Mr. Smith, is this a record of the Paramount Pictures, Incorporated?

“A. Yes, sir.

“Q. Is it made in the regular and ordinary course of business at the Paramount Pictures, Incorporated?

“A. Yes, sir.

(Deposition of George A. Smith.)

“Q. Is it part of the regular and ordinary course of [177] business of Paramount Pictures, Incorporated, to make records such as this at the time that the information is obtained which appears on the record, or within a reasonable time thereafter?

“A. Yes, sir.

“Q. Do you find on this record any reference made to the picture called The Stork Club?

“A. Yes, sir.

“Q. Before I ask you to read the entries which appear on this document, Mr. Smith, will you state what is the general purpose of this record in your corporation?

“A. As pictures are scheduled for release, the sales executives determine a sales policy under which they are to be sold—it is really licensed to the motion picture theatres throughout the United States. That sales classification is listed on the sheet and is sent to the thirty-one branches as their guide as to the proper times under which each individual picture is to be sold.

“Q. How do you break down the type of picture with respect to the breakdown that appears on this sheet?

“A. We have one, two, three, four, five, six, seven sales classifications.

“Q. What are they designated?

“A. Schedule AA, Schedule A, Schedule B, C, D, E, and F.

“Q. Do those sales classifications refer to any

(Deposition of George A. Smith.)

standard of excellence or quality with respect to the motion pictures [178] appearing therein?

“A. Yes, sir, that is the basis of the schedule.

“Q. That schedule AA is the top standard, according to your determination? A. Yes, sir.

“Q. You said you find an entry there for The Stork Club. A. Yes, sir.

“Q. In what category or schedule do you find The Stork Club? A. Schedule A.

Q. Will you read into evidence the entries which appear for The Stork Club, reading in each instance the columnar designation and immediately after the entries for The Stork Club as you go along.

“A. ‘Policy: Schedule A. Production No. 4507. Title: Stork Club. Running Time: 98 minutes. Block or Unit: 2. Release date: December 28, 1945.’

“Mr. Sullivan: So that the record will be clear, the plaintiff offers the entries which Mr. Smith has just read into evidence from a document before him here present in the deposition room as evidence on behalf of the plaintiff.

“Mr. Keith: To which objection is made, no sufficient foundation has been laid for the admission of such matters into evidence.

“Mr. Sullivan: Q. Mr. Smith, is The Stork Club, the [179] motion picture called The Stork Club, still being exhibited?

“A. To a very limited extent.

“Q. As I understood from your testimony, it has gone through approximately 59—

(Deposition of George A. Smith.)

“A. (Interrupting): It is now the 60th week. This week is the 60th week.

“Q. In the course of your experience in handling the sales distribution and release of that picture, did you experience any difficulty with respect to its sales or its booking?

“A. We always have some difficulties when we try to get the proper times, particularly for good pictures. Probably less than usual in this case.

“Q. Speaking from your experience and your knowledge of the sales distribution of Paramount Pictures, was there any particular reason why there was less difficulty in this case?

“A. Yes, there were three reasons. First, it was a very good motion picture; second, it had a very salable title, the popularity of the Stork Club was spread all over the United States. It was a very significant name; and, third, it had a good cast.

“Mr. Keith: I move that the answer of the witness be stricken out on the ground that it is his opinion and conclusion.”

Mr. Picard: I renew the objection, it is purely an opinion. [180]

Mr. Sullivan: We resist the motion on the ground that he is giving the results of his sales experience, and the testimony is offered for these two reasons, first of all, as showing the salability and high standard of excellence of this particular picture, and secondly, the evidence is offered to show that from his experience with the distribution of films—this witness having already testified that he



(Deposition of George A. Smith.)

was employed by Paramount for twenty-five years, he was in a position to give his opinion as sales executive as to the quality of the picture.

The Court: In what way does that go to the merits of the issues here involved?

Mr. Sullivan: This is offered to show, as the clippings of the various magazines were offered to show, the widespread reputation and fame of the Stork Club.

The Court: For that limited purpose I will allow it.

Mr. Sullivan (reading):

“Mr. Sullivan: Q. Mr. Smith, you have been associated with Paramount, I think you told me, for about 25 years. A. Yes, sir.

“Q. During that period of time have you had occasion to handle the sales and distribution of many motion pictures?

“A. Yes, I have personally handled the majority of the most important accounts in my division.

“Q. Can you estimate the number of motion pictures you [181] have handled during your experience with Paramount, or approximate them in some way?

“A. My estimate would be over a twenty-five year period, our yearly releases have averaged approximately 40 pictures. That would be approximately 1000 pictures.

“Q. In the course of the distribution of those pictures, have you been able to acquire from your experience an opinion as to the relative merits and

(Deposition of George A. Smith.)

to the reasons for either the slowness or the speed in moving these pictures into retail channels?

“A. I believe I have. That is what I am hired for.

“Q. A short time ago in your testimony when you gave an opinion as to the merits of The Stork Club and the manner in which its bookings were conducted, were you speaking from your years of experience in this field?

“A. Not only that, but my personal experience in negotiating the sale of this particular picture with a very great number of important accounts.

“Q. In the course of negotiating these sales, what, if any, experience did you have with reference to the popularity of the name ‘Stork Club’?

“A. I found that the picture, because of the three elements that I mentioned, was very favorably received by our customers.

“Mr. Keith: I will object to that on the ground it is [182] hearsay.”

Mr. Picard: I make that motion at this time, the answer should be stricken as hearsay.

Mr. Sullivan: We resist the motion, and in response to counsel’s motion indicate that the reason for offering the testimony is the same reason that I have heretofore indicated to your Honor.

The Court: I will allow it to stand. It goes to the weight of the testimony.

Mr. Sullivan (reading):

“Mr. Sullivan: Q. When you say you found out that it was very favorably received, were those

(Deposition of George A. Smith.)

reactions which you personally received from people with whom you talked?           A. Yes.

“Mr. Keith: I will make the same objection to that, and move that the answer be stricken out.”

Mr. Picard: I object to that question as it calls for hearsay.

The Court: It is clearly hearsay.

Mr. Sullivan (reading):

“Q. Mr. Smith, you came to San Francisco on this last trip when?

“A. The night before last—Wednesday night.

“Q. That would be February 19th?

“A. Wednesday night. [183]

“Q. This is Friday, the 21st.           A. Yes, sir.

“Q. When are you leaving San Francisco?

“A. Leaving tonight.

“Q. At what time?           A. 8:45.

“Q. Where are you going?

“A. Los Angeles.

“Q. Do you expect to be in Los Angeles for any period of time?

“A. I will leave on Wednesday of next week for Kansas City, and I was called into New York this morning for a meeting on March 7th.

“Q. Do you expect to be, or will you be, in the San Francisco Bay Area on March 4, 1947?

“A. No, sir.

“Mr. Sullivan: No further questions.

“Mr. Keith: No questions.”

Now, in connection with the last page of this, Mr. Picard, without burdening the Court with it,

is it a fair statement of the record that it was stipulated that the records which were referred to by the witness Mr. George Smith could be identified as Exhibit A to C, and a photostatic copy substituted in place of the original and the original returned to the witness?

Mr. Picard: That is correct. [184]

Mr. Sullivan: I have here, Mr. Picard, photostatic duplicates of Plaintiff's Exhibits A, B and C for identification which are attached to the original, and both copies, yours and mine, of the deposition, and may I offer them without detaching the ones attached to the deposition?

Mr. Picard: Yes.

Mr. Sullivan: I offer in evidence Plaintiff's Exhibit A for identification, and ask that it be duly admitted and marked.

The Court: It may be admitted.

(Document designated National Picture Report, United States only, for 1945-46, is marked Plaintiff's Exhibit 65.)

Mr. Sullivan: I next offer Plaintiff's Exhibit B for identification and ask that it be admitted and duly marked.

The Court: It may be admitted and marked.

(Document designated Current Week Ending February 22, 1947, and in the righthand corner the notation, Sixty Weeks accumulated to February 22, 1947, is marked Plaintiff's Exhibit 66.)

Mr. Sullivan: Plaintiff offers Exhibit C for identification as plaintiff's exhibit next in order.

The Court: It may be admitted and marked.

(Document designated Final Sales Classification Sheet, Group A-5, Season 1945-46 is marked Plaintiff's Exhibit 67.)

Mr. Sullivan: May the record show that I am referring to A, B and C, and I am using the same designations that appear on the deposition of Mr. Smith. [185]

The Court: We will take a recess for a few minutes.

(Recess.)

Mr. Sullivan: The plaintiff will call Raymond L. Sullivan.

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RAYMOND L. SULLIVAN

called in behalf of the plaintiff, sworn.

The Witness: If your Honor please, my name is Raymond L. Sullivan. My address is 261 San Fernando Way, San Francisco. I am an attorney at law, a member of the firm of Malone & Sullivan, and our office is at 819 Mills Building, San Francisco, and they were so during the year of 1945. I am one of the attorneys for the plaintiff, Stork Restaurant, Inc.

Mr. Clerk, may I ask you to mark this document which I have given you at this time, dated May 4,

(Testimony of Raymond L. Sullivan.)

1945, as Plaintiff's Exhibit for identification next in order.

The Clerk: Marked Plaintiff's Exhibit 68 for identification.

The Witness: And the letter of May 15, 1945, as plaintiff's exhibit next in order, being 69 for identification.

The Clerk: 69 for identification.

Mr. Sullivan: If your Honor please, I have here before me and I identify Plaintiff's Exhibit 68 for identification as being a letter dated May 4, 1945, addressed to the Stork Club, 200 Hyde Street, San Francisco, California. I recognize this as the carbon copy of an original letter. I took this carbon copy from my file. I dictated on May 4, 1945, the original of that [186] letter to my secretary who is Miss Gilligan. I then received the original and carbon back from Miss Gilligan and I signed the original letter and instructed Miss Gilligan to mail it and to take the carbon copy which I have here and which is Plaintiff's Exhibit 68 for identification and place it in our file. I know that this carbon copy, Plaintiff's Exhibit 68 for identification, is a true and correct copy of the original which I signed, and at this time, if your Honor please, I will show this Plaintiff's Exhibit 68 for identification to Mr. Picard (showing).

Mr. Sullivan: Plaintiff offers Plaintiff's Exhibit 68 for identification in evidence, if your Honor please.

Mr. Picard: To which we object, if your Honor

(Testimony of Raymond L. Sullivan.)

please, on the ground that it has not been shown that any of the defendants in this case were actually in possession of the premises designated as the Stork Club, 200 Hyde Street, San Francisco, California, on the date that that letter was mailed or would have been received.

Mr. Sullivan: We will endeavor to connect that up.

The Court: With the understanding it is connected up, I will allow it.

(The letter dated May 4, 1945, addressed to the Stork Club, 200 Hyde Street, San Francisco, is marked Plaintiff's Exhibit 68.)

The Witness: If your Honor please, I am now looking at and I identify Plaintiff's Exhibit 69 for identification, which is [187] a carbon copy of a letter dated May 15, 1945, addressed to the Stork Club, 200 Hyde Street, San Francisco, California, attention N. Zahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara and A. E. Syufy, partners. I took this carbon copy from my files. I dictated the original of which this is a carbon copy to my secretary, Miss Gilligan, and after it was dictated asked Miss Gilligan to return the original letter and this carbon copy to me, and I signed the original. I then gave Miss Gilligan the original with instructions to mail it and the carbon copy with instructions to place it in our file, and I know that this carbon copy, which is Plaintiff's Exhibit 69 for identification is a true and correct copy of

(Testimony of Raymond L. Sullivan.)

the original letter which I signed. I will show this now to Mr. Picard, or did I show you this already, Mr. Picard?

Mr. Picard: Yes.

Mr. Sullivan: I have heretofore given Mr. Picard copies of both of these letters. Plaintiff offers Plaintiff's Exhibit 69 for identification in evidence, if your Honor please, and asks that it be admitted and marked.

The Court: It may be admitted and marked.

(Letter of May 15, 1945, addressed to Stork Club is marked Plaintiff's Exhibit 69.)

Mr. Sullivan: That is all the direct testimony I have, your Honor.

Mr. Picard: No questions [188]

Mr. Sullivan: Plaintiff will call Teresa Gilligan.

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TERESA GILLIGAN

called for the Plaintiff, sworn.

The Clerk: Will you state your name to the Court?

A. Teresa Gilligan.

Q. (By Mr. Sullivan): Where do you live?

A. 795 Pine Street.

Q. Your occupation is what?

A. Housewife at present.

The Clerk: In April or May of 1945 were you employed?



(Testimony of Teresa Gilligan.)

A. Yes, I was employed by Malone & Sullivan, as secretary for Mr. Sullivan.

Q. And you were some time before that, were you not?      A. Yes.

Q. And for several months after May, 1945?

A. That is right.

Q. Now I will show you Plaintiff's Exhibit No. 68 in evidence, which is a letter addressed to the Stork Club, 200 Hyde Street, dated May 4, 1945, and ask you if you can identify that. This is a carbon copy?      A. Yes.

Q. Can you identify that?

A. Yes, I can identify it by my initials. I know that I wrote it because of that. [189]

Q. And you had a practice, did you not, at that time of identifying the correspondence by initials on our correspondence at the bottom?

A. That is correct.

Q. And RLS, what does that mean?

A. R. L. Sullivan.

Q. Does that indicate I dictated the letter?

A. Yes.

Q. And the "G" stands for what?

A. Gilligan.

The Court: Where is the original?

Mr. Sullivan: I am going to show we mailed it.

The Court: Mailed it to whom?

Mr. Sullivan: Mailed it to the addressee.

The Court: Who is the addressee?

A. 200 Hyde Street, San Francisco, California.

The Court: You will have to account for the

(Testimony of Teresa Gilligan.)

original before the copy is introduced in evidence.

Mr. Sullivan: Your Honor is correct. We argued the motion for a preliminary injunction and at that time I think that Mr. Picard took the position that his clients never received any of these letters.

Mr. Picard: I have been advised by my clients that they never received either of these letters. I believe there was considerable delay in their obtaining a license for the premises [190] and the former owner remained in possession until the license was granted, and it was granted some time after May 15, 1945, and my clients have never seen these letters until Mr. Sullivan furnished me with copies, I think at or about the time of the argument for a motion for a preliminary injunction.

The Court: I will allow them subject to being connected up.

Mr. Sullivan: Does your Honor mean as to the date?

The Court: As to the letter and its contents.

Mr. Sullivan: Do I understand, then, in view of Mr. Picard's statement that it is unnecessary for me to make a formal statement of the evidence?

The Court: If there is any question about it at all, he is entitled to the best evidence, and if his clients did not receive it, they are not bound by anything they did not receive.

Mr. Sullivan: I am relying on it and offering the testimony in order to establish the dictation

(Testimony of Teresa Gilligan.)

and mailing of the originals and the presumption thus far is that it has been received.

Mr. Picard: If your Honor please, I do not think that presumption would prevail in this case. I do not think counsel comes within the presumption of law. The presumption of law, as I understand it, is that a letter regularly addressed to a person is received in due course of the mail, but when it is addressed to the Stork Club and none of the defendants in this [191] case were in the Stork Club at that time, I do not think there is any presumption arises that any of these defendants received that letter.

Mr. Sullivan: We will connect it up, because, as your Honor can see, that is how we got hold of the names of these defendants, and that is how we indicated them on the letter of May 15, 1945. They were of record as being the owners at that time.

The Court: I will allow the testimony subject to a motion to strike and overrule the objection and unless it is connected up it will go out.

Q. (By Mr. Sullivan): With respect to Plaintiff's Exhibit 68 in evidence, was that prepared by you? A. Yes, it was.

Q. Who dictated that to you?

A. Mr. Sullivan.

Q. I did? A. Yes.

Q. At the time that you typed this up, did you type an original? A. Yes, I did.

Q. And is this carbon copy a true and correct copy of the original? A. Yes.

(Testimony of Teresa Gilligan.)

Q. After you typed these letters out, did you then give them to [192] me? A. I did.

Q. And did I sign them? A. You did.

Q. And did I give them to you? A. Yes.

Q. What did you do with them?

A. I put them in an envelope marked Malone & Sullivan, the regular stationery, and stamped them with a three-cent stamp and mailed them.

Q. When you say, "the envelope was marked Malone & Sullivan," you mean that is the return address? A. Yes.

Q. Which is printed or engraved on the envelope? A. Yes.

Q. Did you address the envelope to the Stork Club? A. The same as in the letter.

Q. Did you put a stamp on that envelope?

A. I did.

Q. Then did you mail that envelope?

A. I did.

Q. Did you mail it in a United States mailbox?

A. Yes, in the Mills Building.

Q. And with respect to Plaintiff's Exhibit 69, did you prepare this letter and also an original with it? [193] A. I did.

Q. I had better show you these letters. Do you identify this letter by the initials in the lower left-hand corner? A. Yes.

Q. The "RLS" indicates that I dictated the letter to you? A. That is right.

Q. And "G" stands for Gilligan?

A. That is right.

(Testimony of Teresa Gilligan.)

Q. After this had been dictated to you and typed by you, did you give it to me? A. I did.

Q. Did I sign it? A. Yes.

Q. Did I give it back to you?

A. Yes.

Q. What did you do with it then?

A. I folded it in an envelope, stamped it, mailed it.

Q. When I mentioned about your giving it to me and my giving it to you, we are talking about the original, are we? A. Yes.

Q. Then after you had addressed the envelope—did you incidentally, address it to the same address that appears on the letterhead here?

A. That's right.

Q. After you did that, did you stamp the envelope? [194] A. Yes, I did.

Q. Then mail it? A. Yes.

Q. In a United States mailbox?

A. Yes, in the Mills Building.

Mr. Sullivan: No further questions.

Mr. Picard: No questions.

Mr. Sullivan: Plaintiff will call the defendant N. Sahati pursuant to rule 43(b) of the Rules for Civil Procedure.

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NICHOLAS M. SAHATI

called for the Plaintiff, was sworn.

The Clerk: Will you state your name to the Court?

A. Nicholas Michael Sahati.

(Testimony of Nicholas M. Sahati)

Direct Examination

By Mr. Sullivan:

Q. Where do you live?

A. 3770 Fillmore Street, at the present time.

Q. You are one of the defendants in this case, are you not?

A. Yes.

Q. What is your occupation?

A. Well, my main occupation is food packing—I am in the food packing business.

Q. The defendant, Zafer Sahati, you know her, do you not?

A. Yes.

Q. She is your mother, I believe.

A. Yes. [195]

Q. And she lives in San Francisco, does she?

A. Yes.

Q. And Sally Sahati is your sister?

A. That is right.

Q. And she lives in San Francisco?

A. That is correct.

Q. And Edmond Sahati is your brother?

A. That is correct.

Q. He lives in San Francisco?

A. That is correct.

Q. And Alfred Ansara is your brother-in-law?

A. That is correct.

Q. And he lives in San Francisco?

A. That is right.

Q. And A. E. Syufy is your uncle?

A. Right.

Q. And he lives in San Francisco?

A. That is right.

(Testimony of Nicholas M. Sahati)

Q. Now, Mr. Sahati, in the early part of 1945, you and the other defendants, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara, A. E. Syufy, formed a co-partnership, did you not, with respect to the business at 200 Hyde Street?

A. That is right.

Q. And you took over that business as a co-partnership on what date? [196]

A. Well, around March 15, I think the actual papers were drawn up in the transaction, but we actually did not take possession and install our manager until probably sixty days later, because of the State Board of Equalization regulations concerning the transfer of a license.

Q. Well, Mr. Sahati, is it a fact you and the other defendants filed an application with the State Board of Equalization for a liquor license or for a transfer of the liquor license on March 14, 1945?

A. That is correct.

Q. Isn't it a fact that this liquor license was issued to all of you on April 6, 1945?

A. It might have been issued, that is, the transfer of the record might have been effected at that date, but we did not take possession, as I explained to you, until the license actually came through; until that time we were not, according to law, allowed to put in our own manager and operate under our own payroll. The place at that time was still under the management of Bill Bush and his associate.

Q. But irrespective of when you, according to testimony, took possession, it is a fact, is it not,

(Testimony of Nicholas M. Sahati.)

that you were issued a liquor license on April 6, 1945?

A. If the record shows that, but we of course had to acquire through the Bank of America escrow, which we did not entirely consummate on the date that you mention. [197]

Q. Well, at any rate, you were connected with this establishment at 200 Hyde Street on April 6, 1945?

A. That is correct as to actual ownership, but not actual possession—do I make myself clear?

Q. Well, as a matter of fact, you received part of the profits for that period?

A. We did in this respect, the agreement made with Bush and his associates embraced a proportionate accounting of profits from March 15 or thereabouts on, on the basis that we agreed on a percentage basis, to which we both agreed, of the total receipts. Those figures were taken from statements furnished by them while still in the active handling of the business.

Q. Now, this partnership of you and the other five defendants continued throughout most of the year 1945, isn't that correct?

A. That is correct.

Q. And would it be fair to state that somewhere in the latter part of 1945 you and Mr. Ansara withdrew from the partnership, at least of record?

A. That is right.

Q. And the other four defendants then entered



(Testimony of Nicholas M. Sahati.)

into a co-partnership with respect to these premises?

A. That is right.

Q. And they have continued as such down to date?

A. That is right.

Q. But as a matter of fact, you have been the guiding spirit [198] ever since March 14, 1945, have you not?

A. That is correct.

Q. In other words, you are the boss?

A. I would not say that I am the active manager. I am the active manager of a number of business enterprises that we run, hotels and apartment houses and bowling alleys and the like of that; and a small restaurant at Lake Tahoe.

Q. The place at Lake Tahoe has to do with entertainment?

A. Yes.

Q. You have also had other liquor establishments in San Francisco?

A. Yes, we have.

Q. As a matter of fact, even though the record is different with respect to the holding of the liquor license in the premises at 200 Hyde Street, you are still financially interested in it?

A. None whatsoever, neither of record or hidden, as you might call it.

Q. Do you get any compensation for acting as manager?

A. None at all except at various times whether it be my sister or my mother or someone else, they have had surplus funds which I have seen fit to place for them; as a matter of fact, they don't know whether they were interested in a bar or restaurant, neither my sister, my mother nor my uncle, any of

(Testimony of Nicholas M. Sahati.)

them; it so happens that I am entrusted with their funds, and as I said, at [199] various times I have placed them.

Q. But you have complete authority to act for them?  
A. I have complete authority.

Q. And so far as the particular premises at 200 Hyde Street are concerned, you have had the same amount of authority after your withdrawal from this partnership as you had before?

A. Only in the capacity of manager which I still retain at this time, and which I had at that time.

Q. Now, when you took over the business at 200 Hyde Street from Mr. Bush, you also assumed the name of the Stork Club, did you not?

A. I do not quite understand that question.

Q. All right, I will put it this way: When you and your five partners began to operate the Stork Club on Hyde Street, at 200 Hyde Street, you operated it under the name of the Stork Club, didn't you?  
A. That is correct.

Q. And when you took over this business it was a going business, was it not?

A. That is correct.

Q. And you just assumed the name Stork Club when you took this over, did you?

A. I bought the business as it was known, as the Stork Club.

Q. But you did not buy the name?

A. I don't think any specific mention was made of the name; we [200] bought the business, as I recall, and it was embodied in the bill of sale as the

(Testimony of Nicholas M. Sahati.)

premises at 200 Hyde Street, known as the Stork Club; having had no previous experience to amount to anything in the way of buying places of this nature, it was just assumed that we bought the business, the name and everything else.

Q. Aside from that, it is a fact that you did not buy the name, isn't that correct?

A. That I would not swear to, but we bought the business known as the Stork Club. Now the name alone at that time was not brought up. The same applies to our purchase of a place called The Topper Club.

Mr. Sullivan: We object to this as volunteer and not responsive.

The Court: He may finish the answer.

A. The same applies to the way we bought the Topper Club, where we bought the business with the name of The Topper Club. The bill of sale embodied the premises known as The Topper Club. So to that extent the assumption is that we bought the Stork Club and also the right to use the name at the time from Bill Bush.

Q. Mr. Sahati, do you remember the deposition which was taken of you in my office on February 18, 1945?

A. I do.

Q. I will show you the deposition and show you particularly [201] Page 12, and I will ask you to read from line 15 down to line 22 and then after you have done that I will ask you——

A. Yes, I remember that.

Q. I will ask you, Mr. Sahati, if at the time and

(Testimony of Nicholas M. Sahati.)

place of the taking of this deposition I did not ask you the following questions to which you gave the following answers:

“Q. When you purchased the business at 200 Hyde Street from Mr. Bush, did you take an assignment of the name which is called the ‘Stork Club’ and appears in your premises?”

“A. No, sir.

“Q. You just merely kept that on there?”

“A. That is right.

“Q. He didn’t sell you the name?”

“A. No.”

Did you give those answers at that time?

A. Yes, I did, but the way I understood the question was, Was there a specific line of demarcation between the premises and the name, and my answer was made accordingly. In other words, as I just explained previously, the bill of sale embodied the purchase of the Stork Club premises at 200 Hyde Street known as the Stork Club. There was no definite line of demarcation by the actual name Stork Club from the Stork Club as the premises; that is what the essence of my understanding was and the answer to your question at that time.

Q. But aside from your understanding, Mr. Sahati, it is true, [202] is it not, as you stated there, that you did not get an assignment of the name itself?

Mr. Picard: I will object to that on the ground

(Testimony of Nicholas M. Sahati.)

that the bill of sale itself is the best evidence of its contents.

The Court: If the bill of sale is available, that is the best evidence.

Mr. Sullivan: Mr. Sahati, after you people went into the operation of the Stork Club, of course you used the name "Stork Club" in connection with various state and national agencies? A. We did.

Q. For instance, when your co-partnership filed income tax return, you filed it under the name of Stork Club? A. Yes.

Q. When you filed your California income tax return for your co-partnership, you filed it under the name of Stork Club? A. Yes, we did.

Q. That practice has been continued from the former partnership and new partnership down to date? A. Correct.

Q. And you also listed the Stork Club in the telephone book, did you not?

A. Yes. Let me modify that. I would not say we made a new listing; we carried on with the old listing from the time Bill Bush and his associates owned the place; there was no change in telephone number, and no change of listing. [203]

Q. Well, you kept the listing in the book for the Stork Club? A. As it was before.

Q. I have here, Mr. Sahati, a San Francisco telephone directory for November 1946, and I will direct your attention to Page 507, and in particular on the second column of this page, "Stork Club,"



PLAINTIFF'S EXHIBIT No. 71

[Endorsed]: U. S. D. C. N. D. Cal. No. 25707.  
Plaintiff's Exhibit No. 71. Filed 4/2/47. C. W.  
Calbreath, clerk. By J. P. Welsh, deputy clerk.





PLAINTIFF'S EXHIBIT No. 70

[Endorsed]: U. S. D. C. N. D. Cal. No. 25707.  
Plaintiff's Exhibit No. 70. Filed 4/2/47. C. W.  
Calbreath, clerk. By J. P. Welsh, deputy clerk.

(Testimony of Nicholas M. Sahati.)

Mr. Sullivan: Q. Now, do you have any signs on the [204] exterior of the premises that mention the name Stork Club?

A. Yes, on the marquee is a sign that has been there for the last seven years—five years probably before we purchased it.

Q. You mean since 1940?

A. I think so. Since thereabouts it has been there.

Q. How do you place that date?

A. Well, the former owners went in there about that date, I understand.

Q. 1940? A. Around that date.

Q. Do you know of your own knowledge?

A. I couldn't say that I do.

Q. Did you ever see that sign there in 1940?

A. No, I did not. I was not in San Francisco then and had no interest in any nightclub at the time.

Q. You were not in San Francisco in 1940?

A. No.

Q. Were you in San Francisco in 1941?

A. Yes, I think so.

Q. Did you see that sign there in 1941?

A. I couldn't say as to that because I was not interested in nightclubs, but I understand the former owners operated under that name for a good many years prior to the time we purchased the business.

Mr. Sullivan: If your Honor please, the plain-

(Testimony of Nicholas M. Sahati.)

tiff moves [205] to strike the testimony of the witness as to what he understands.

The Court: It may go out.

Mr. Sullivan: That is his understanding, the former owners operated under that name for a good many years prior to the time they purchased the business.

The Court: It may go out.

Mr. Sullivan: Q. Now that sign is on the marquee, you say, on the outside of these premises?

A. Yes.

Q. It has been there continuously since you people purchased the premises from Mr. Bush?

A. That is correct.

Q. And it is there now?                   That's right.

Q. Since the first day that you purchased the premises and owned them, did you have any insignia about the premises consisting of a stork standing on one leg or any kind of stork insignia?

A. There was on the glass panel of the front door the insignia of the stork but no monocle and no top hat.

Q. Was it standing on one leg?

A. I could not tell you, Mr. Sullivan, I don't recall.

Q. After the institution of this action you had this removed, didn't you? [206]

A. I did. The first time it was brought to my knowledge I had it removed.

Q. Did you ever use the insignia in any other way on the premises?

(Testimony of Nicholas M. Sahati.)

A. There might have been a few leftover napkins that the former owners had in the place when we took over, with the picture of a stork, which we used up, but never did order any napkins of that type.

Q. And how many napkins did you take over?

A. I couldn't say exactly, maybe a few dozen.

Q. A few dozen?           A. Yes.

Q. Isn't it correct that there was a large quantity of napkins there and you continued to distribute them until almost the time this action was commenced?

A. There might have been a larger quantity; I have no method of knowing, I could not tell you exactly how many there were; in other words, we used up whatever surplus or excess supply there was.

Q. Whatever there was, you used them up?

A. That is correct.

Q. Mr. Sahati, I will show you Plaintiff's Exhibit 72 for identification and ask you if that is one of the napkins which was distributed at your place of business.

A. I could not tell you, I never seen it before, but I do know [207] there were some napkins in the place when we took over.

Q. Have you ever been in the place at 200 Hyde Street?

A. I have been in there about five times in the two years, merely to change managers.

(Testimony of Nicholas M. Sahati.)

Q. You have never seen any napkins in the place at all?

A. I have never seen these napkins specifically.

Q. Not this napkin, but one like it?

A. No.

Q. You have never seen any napkins?

A. I have seen napkins, but I have not seen that napkin depicting the stork insignia.

Q. Take a look at Plaintiff's Exhibit 72 for identification. I call attention to the fact that it says, "Stork Club, Corner Turk and Hyde Streets." Is that your establishment?

A. That is right.

Q. "Graystone 9764," is that your telephone number? A. That's right.

Q. You do not deny that this came from your establishment?

A. I can neither deny it nor affirm it; it is in the same situation as many things that we took over when we took over the premises; I could not tell because I would not know what they were.

Q. Weren't you the manager of this establishment?

A. No, I was not. I am the overall manager; each place has a manager in it; I am the overall manager, of the entire [208] organization.

Q. As overall manager, do you have under your supervision the activities of your various places?

A. I do not think it is very material in this case. I do not think it is very material in the case of the napkins for my time to be devoted to single items

(Testimony of Nicholas M. Sahati.)

like this, that the managers themselves usually take care of in the routine line of business.

Q. Mr. Sahati, I did not ask you that question. I asked you this question, Don't you as overall manager of your family enterprises have supervision over the operation of the various places of business?

A. That's right.

Mr. Sullivan: I offer this napkin, marked Plaintiff's Exhibit 72 for identification, in evidence, if Your Honor please.

The Court: It may be admitted and marked.

(The napkin marked Plaintiff's Exhibit 72 for identification is received in evidence as Plaintiff's Exhibit 72.)



*San Francisco*

FINEST LIQUORS • EXPERTLY BLENDED ENTERTAINMENT



U. S. DIST. CT. N. D. CAL.  
 No. 25707  
 EX. No. 72  
 Filed  
 G. W. CALDWELL, CLERK  
*[Handwritten signature]*





(Testimony of Nicholas M. Sahati.)

Mr. Sullivan: Q. You told us about the insignia on the door, Mr. Sahati. Is there any other place upon which the insignia of the stork appeared?

A. I can not recall, Mr. Sullivan; the glass panel on the door is the only place where I can recall that insignia appearing. [209]

Q. Have you been in the place recently?

A. Well, I have not been in there for approximately three months; I very seldom go in there; I never have had occasion to go in unless I had to make a change of managers.

Q. Well, now, Mr. Sahati, you have advertised in magazines in San Francisco, haven't you?

A. No.

Q. Haven't you ever given any ads to magazines?

A. We did give a couple of newspaper ads, very infrequently, probably in some special publications like the City Hall Digest; in your question as to whether I advertised it in magazines, I assume that you mean magazines of a wide circulation; the magazines we have placed ads in have been purely complimentary, like the American Legion; and there are some magazines we have given complimentary ads sometimes, but not advertising in the sense that I assume you are questioning me about, of a widespread nature.

Q. At any rate, you have advertised in magazines, whatever may be their circulation.

A. That's right.

(Testimony of Nicholas M. Sahati.)

Q. When you advertised it, you advertised it as the Stork Club, didn't you?

A. That is right.

Q. On occasions you use an insignia, do you not?

A. Not an insignia. [210]

Q. You never use the insignia?

A. No, no.

Q. Did you ever advertise in any other way?

A. Nothing except typewritten ads at very infrequent intervals as I mentioned.

Q. On how many occasions since March, 1945?

A. No more than five or six complimentary ads.

Q. That is all? A. Yes.

Q. You have never had any cards distributed or given out?

A. Never—never printed a card.

Q. Who is Johnny Cappula? Does he work for you? A. He did.

Q. As I understand it, he was your manager under you as overall manager, is that correct?

A. Well, I supervise all the activities of the family, as I told you; specifically I did not manage this place, but I supervised the entire activities and placed the managers; that is the way our operations are conducted.

Q. And Johnny Capula had complete charge of the premises at 200 Hyde Street? A. Yes.

Q. Mr. Sahati, I will show you Plaintiff's Exhibit 73 for identification, a card which says, "Johnny Capula presents Wilbur Stump playing

(Testimony of Nicholas M. Sahati.)

piano nitely, The Stork Club, Hyde and [211] Turk." Have you ever seen that card before?

A. I never saw that card before; I knew Walter Stump was there.

Q. He was there?

A. Yes, Walter Stump was there. I didn't know that he put out cards like that.

Q. You know this is your place, don't you?

A. I will tell you, if I had known he put out that card, he would have been fired immediately.

Mr. Sullivan: I will offer in evidence this card marked Plaintiff's Exhibit 73 for identification, and ask that it be duly admitted and marked.

The Court: It may be admitted and marked.

(Card marked Plaintiff's Exhibit 73.)



*Johnnie Coppula*

*presents*

**WILBUR STUMP**

*playing piano nightly*

★ **STORK CLUB** ★

**HYDE AND TURK**

---

U. S. DIST CT N. D. CAL.

No. 25707

*PLP*

EX. No. 73

FILED 4-2-47

C. W. CALBREATH CLERK

BY

*J. P. Wilson*



(Testimony of Nicholas M. Sahati.)

Q. (By Mr. Sullivan): Now, did you ever have any other kind of advertising or advertising material?      A. Never.

Q. Now, Mr. Sahati, I will show you a match pad which is marked Plaintiff's Exhibit 74 for identification and reads, "Phone Graystone 9764, The Stork Club, 200 Hyde Street, San Francisco," and ask you if you ever saw that before or any replica of this.

A. Well, the name on here is Sahati. I will tell you something about these——

Q. I would like an answer. [212]

A. I will give you an answer if I can explain.

Q. Will you please answer the question, Have you seen it?      A. I have not seen it.

Q. Or anything like it?

A. No, I have not.

Mr. Picard: Now, you can explain your answer.

A. Now I can explain this. The company who furnished these match books takes standing orders, and they are way behind in their deliveries, and when the new owner came in, they probably came to the manager and told him, because we had taken over several deposits——

Mr. Sullivan: I will move to strike this testimony as being just a conclusion and opinion of the witness.

The Court: You don't know that of your own knowledge?

A. I do; if you will let me explain I will tell you. The same thing happened, Mr. Sullivan, too, in the



(Testimony of Nicholas M. Sahati.)

case of the Topper Club. We had a deposit with a match company—we did not place the deposit originally, the former owner placed the deposit, and then we were given credit for it, so they came up to the manager and asked him who the new owner was, because the place still had a credit, and so the manager gave the name as Sahati. I have never seen this before. That is the only explanation for the name on there.

Q. (By Mr. Sullivan): Now, Mr. Sahati, these match pads in countless numbers were distributed at your place? [213]

A. I would not say countless, I would say the balance of the order that had probably gone to the former ownership, which we took over, which we did on all deposits made on merchandise. Now the manager probably was approached by the salesman and told that he had a credit coming from this company and asked who the new owner was; thereupon receiving the name, the manager probably observed the name or told them to put the name of Sahati on there.

Mr. Sullivan: I move to strike all of that testimony.

The Court: Let the probable portion go out.

Q. (By Mr. Sullivan): You know that match pads with the name of the Stork Club and your name on it were being distributed at the Stork Club, 200 Hyde Street? A. I did not.

Q. Didn't you ever go in there to supervise the distribution of various things?

(Testimony of Nicholas M. Sahati.)

A. No, as I told you before, I did not supervise the activities.

The Court: He said he was in there five times in two years.

Mr. Sullivan: Plaintiff offers this match pad which has been marked Plaintiff's Exhibit 74 for identification in evidence and asks that it be duly admitted and marked.

The Court: It may be admitted and marked.

(The match book is marked Plaintiff's Exhibit 74.) [214]



U. S. DIST. CT. N. D. CAL.

No. 25707

*Pyp*

EX. No.

*74*

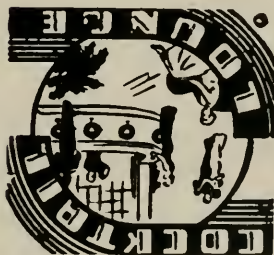
FILED

*4-2-47*

C. W. CALBREATH, Clerk

*J. M. [unclear]*

SAN FRANCISCO, CALIF.



Phone  
Graystone 9764

# THE STORK CLUB

200 Hyde Street  
SAN FRANCISCO

SAHATI, Prop.

CLOSE COVER BEFORE STRIKING



(Testimony of Nicholas M. Sahati.)

The Court: We will take an adjournment now until tomorrow morning at 10:00 o'clock.

(An adjournment was taken until tomorrow, Thursday, April 3, 1947.) [215]

Thursday, April 3, 1947—10:00 A.M.

The Clerk: Stork Restaurant v. Sahati.

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NICHOLAS SAHATI

recalled.

Direct Examination

(Resumed)

By Mr. Sullivan:

Q. Mr. Sahati, you made some mention yesterday about the telephone that is now listed at the premises which you operate at 200 Hyde Street. I don't know whether I asked you this question, but I will at this time, that has been a continuous listing, has it, since you people took over the premises? A. Yes.

Q. And you have paid the bills, have you?

A. Yes.

Q. Who signs the checks? A. I do.

Q. You sign the checks for any of the activities around the place?

A. Exactly what do you mean by activities?

Q. You sign the checks for the purchase of liquor? A. Yes.

Q. You sign the checks for alterations about the premises?

(Testimony of Nicholas Sahati.)

A. Alterations are usually paid out of petty cash funds which the manager has in his possession.

Q. Well, you just did over your sign in front of the premises, [216] didn't you? A. Yes.

Q. You knew that? A. Yes.

Q. There was a bill for that, was there not?

A. Painting you mean?

Q. Yes. A. Yes.

Q. You did not pay that out of petty cash, did you?

A. No, that is paid by the owners of the building.

Q. The owners of the building—So you did not pay that? A. No.

Q. But for any extensive supplies for the premises that would be paid by check signed by yourself? A. Correct.

Q. How do you sign those checks? Do you sign Stork Club?

A. The check is made out Stork Club and my signature appears on it.

Q. All of your bills are paid the same way with the exception of the small bills out of petty cash, is that correct? A. Yes.

Q. I asked you yesterday about the use of the insignia, Mr. Sahati, and I believe that you told me that with the exception of the door, where you had the insignia originally on the front door, the insignia of the stork, and with the possible [217] exception of the napkins, you did not use that insignia at any time in any other way, is that correct?

A. That is correct.

Q. You told me something yesterday about advertising this place, and I want to ask at this time if you have ever advertised the Stork Club at 200 Hyde Street in any other way than you told me yesterday.

A. Not that I recall.

Q. Did you ever advertise it as a place of entertainment?

A. Well, at one time we had the pianist, and when we took over from the previous ownership there was a three-piece orchestra that they had on their payroll for probably two years, which continued with us for about a month after we took over, and at that time there was no advertising in the papers or magazines or in any periodical; it was simply there; I think there was a little panel placed over the marquee saying "Entertainment" or words to that effect.

Q. When you say "little panel," was it the size of the whole marquee?

A. It probably was, but that has long since been removed.

Q. When?

A. I think it was about three months ago when they had a pianist in there, and when the pianist was discontinued the panel was taken down.

Q. Three months ago would be around January.

A. I could not give you the exact date, Mr. Sullivan, but in that approximate period.

Q. Well, that would be a fair statement, wouldn't it, January, 1947?

A. Well, I would not want to say; it might have been three months, it might have been four months.



(Testimony of Nicholas Sahati.)

I would have to look my records over if I were to give you a definite statement on it.

Q. When had that panel been placed there?

A. I couldn't tell you, I would say a year and a half or two years ago.

Q. That would be around 1945?

A. Not that particular panel,—maybe another panel. In those days they frequently tore down things, the boys got a little hilarious and would rip down the panel, so it might have been a new panel entirely.

Q. Did you ever see anybody pulling that panel down?      A. Did I?

Q. Yes.

A. That has happened quite frequently.

Q. Did you ever see them pulling it down?

A. Yes.

Q. You saw people pulling the panel down?

A. Yes.

Q. When was the occasion you mentioned about two years ago [219] that they had that panel? Would you say that would be around 1945?

A. I would imagine so; I think it was pulled down on V-J Day.

Q. That would be August of 1945?

A. I think so.

Q. Mr. Sahati, I will show you Plaintiff's Exhibit 75 for identification, which purports to be a photograph of your establishment at Turk and Hyde

(Testimony of Nicholas Sahati.)

Streets and ask you if that is an accurate and fair reproduction of the establishment.

A. Correct.

Q. I will call your attention to a panel which is all along the marquee, and says "Entertainment."

A. I just told you that.

Q. This was the panel you say somebody pulled down.

A. No.

Q. That is not the panel?

A. I think in answer to your question whether it was the same panel, I said it might have been a different panel; this one I mentioned here, I told you I could not place the exact date.

Q. The panel two years ago was in the same position, was it not?

A. I could not tell you that.

Q. You don't know whether it was in this position or along the wall?

A. If I remember correctly, the panel was on one front here, [220] it did not cover the entire marquee.

Q. You actually saw people pull it down?

A. It happened in our three places on that day.

Q. Now, I will show you Plaintiff's Exhibit 76 for identification which purports to be another view of your place of entertainment.

A. That is the same panel.

Q. That is the same panel?                   A. Yes.

Q. And does that panel extend from the other side of the marquee which is not shown in Plaintiff's Exhibit 75 for identification, is that correct?

A. That is right; it extends all the way around.

(Testimony of Nicholas Sahati.)

Q. These pictures, you will notice, were taken on December 5, 1946.

A. I have no way of remembering the particular panel that was up there.

Q. I call your attention to Plaintiff's Exhibit 76 for identification; that is a fair and accurate reproduction of your place of business?

A. Yes, exactly.

Q. And would you say that both of these pictures were fair and accurate reproductions of your place of business on December 6, 1946?

A. Yes, I would say so, these are both 1946 pictures. [221]

Mr. Sullivan: I offer Plaintiff's Exhibit 75 and 76 for identification in evidence, if your Honor please, and ask that they be duly admitted and marked.

The Court: They may be admitted and marked.

(The photographs were marked Plaintiff's Exhibits 75 and 76.)



U.S. DIST. CT. N. D. CAL.

No. 25707

PLP. 75  
4-7-47

U.S. DIST. CT. N. D. CAL.

... *John Milob*



(Testimony of Nicholas Sahati.)

Q. (By Mr. Sullivan): Mr. Sahati, at the time you and the five other people you mentioned as partners first purchased the place of business at Turk and Hyde Streets, you personally yourself knew of the existence of the New York Stork Club, didn't you?

A. I had heard of it; I had no idea of what it embraced or was like.

Q. You had known of the use of the name Stork Club by the Stork Club of New York for some time, hadn't you?      A. I would not say that.

Q. How long before March 14, 1945, had you?

A. I can answer that: I was not much interested in establishments of night clubs to that extent, and I did not visit those places; had no interest in them.

Q. Approximately how long before March 14, 1945, two years, three years, five years, ten years?

A. I could not tell you that. As a matter of fact, I can say I gave it very little attention, probably never heard of it, as far as that goes. [222]

Q. There is no question that you knew about it before you purchased the place, isn't that correct?

A. Well, I had heard about the Stork Club of New York; how extensive an affair it was I had not given any thought to.

Q. I will show you Plaintiff's Exhibit 68 in evidence which purports to be a letter that I wrote to the Stork Club on May 4 of 1945. Have you the original of that letter?      A. No.

Q. Did you receive the original of that letter?

A. No.

(Testimony of Nicholas Sahati.)

Q. On May 4, 1945, 200 Hyde Street was the legal business address of the business that you and your associates were conducting there, wasn't it?

A. The legal business address of our business was 410 Loew Building, San Francisco.

Q. Mr. Sahati, was 200 Hyde Street the business address of the Stork Club as conducted by the co-partnership constituted and comprised of you and the five other people have mentioned?

A. Yes.

Q. I will show you this letter of May 15, 1945, which is Plaintiff's Exhibit 69 in evidence, addressed to the Stork Club at 200 Hyde Street, San Francisco, attention N. Sahati and other people, and ask you if you received the original of that letter.

A. No, I did not receive the original of this letter dated [223] May 15.

Q. Was 200 Hyde Street the business address on May 15, 1945, or thereabouts of the co-partnership composed of the people you mentioned?

A. That is right.

Mr. Sullivan: No further questions.

#### Cross-Examination

By Mr. Picard:

Q. Mr. Sahati, were you and your associates— I will refer to the other members of the family as your associates—were you and your associates in possession of the premises known as the Stork Club on May 4, 1945?

(Testimony of Nicholas Sahati.)

Mr. Sullivan: Objected to as immaterial, irrelevant and incompetent, if your Honor please; they owned the place and had given it that business address. Whether they were there or not that day, certainly it does not affect the matter.

Mr. Picard: I do not think counsel's remarks are apropos of the situation. If your Honor is at all familiar with the manner in which these liquor licenses are transferred, at that time, particularly the State Board of Equalization of California was very strict as to anyone taking possession until the license was actually delivered to the new licensee. The old licensee was required to remain in possession—it sometimes took as long as three or four months for the license to be delivered; they examined all of the books for the sales tax; they made various investigations; they issued the license and [224] they retained it and some time elapsed before delivery. The legal title might have been transferred during the intervening period by the delivery of the bill of sale.

Mr. Picard: What is the date of this letter?

Mr. Picard: May 4 was the first one. Then there was one of May 15.

The Court: If he was not there on the premises you are entitled to make that showing.

Mr. Sullivan: If he was not there?

The Court: Yes, for the reason that there is a question about whether that was delivered to him. Am I in error?

Mr. Sullivan: I would not say your Honor is



(Testimony of Nicholas Sahati.)

in error, but the point is this: Every indication here is these people gave a legal address of 200 Hyde Street. How in the world could you make demand upon these people otherwise?

The Court: Assuming that to be true. Suppose it was mailed and delivered to the premises and they were not there. They say they did not get it. They have got to show that. I will allow the question.

Mr. Picard: Will you read the question, please?

(Question read.)

Q. Were you and your associates in possession of the premises known as the Stork Club at 200 Hyde Street, San Francisco, on May 15, 1945?

A. No, sir. [225]

Q. Now, Mr. Sahati, will you please describe the size and general appearance of the premises known as the Stork Club at 200 Hyde Street?

A. The tavern at 200 Hyde Street known as the Stork Club would be, I would say, about 15 feet on Turk Street, and I would say maybe 40 feet on Hyde Street.

Q. What would be the interior?

A. About one-fifth of that space was occupied by restrooms for both the ladies and men. One-fifth, about that space, I would say, was used for store-rooms for liquors, and the other three-fifths contains a bar and about ten stools.

Q. (By the Court): Who is the owner of the building?           A. The Bank of America.

(Testimony of Nicholas Sahati.)

Q. What size is that lot—that must be about 20 feet.

A. No, I would say it is 15 feet on Turk Street.

Q. Does the Bank own the adjoining property?

A. I think they do.

Q. What I am trying to find out is what vara lot that it is; that would give the size of the premises.

Mr. Picard: Not necessarily, because this building might not take up the entire lot.

The Court: All right. Proceed. All I had in mind was the size of these premises.

Mr. Picard: It looks to me a little over 15 feet.

A. I do not think you will find it more than 15 feet. [226]

Q. (By Mr. Sullivan): Have you measured it?

A. No.

Q. Are you just guessing?

A. I know from the panes of glass there, there are two panes of glass and they run about six feet in width, and I think it is about three feet from the end of the window to the corner.

Q. It is all of six feet, there are two windows?

A. Probably 15 or 17 feet, I do not think it would be any more.

Mr. Picard: I would say it would not exceed 20 feet. We won't have any difficulty in finding out. We can measure it.

The Court: Proceed with the case.

Mr. Picard: I do not think it makes a great deal

(Testimony of Nicholas Sabati.)

of difference anyway. It is a small place; that is what I am trying to show.

Q. You say there is a bar there with about ten stools?

A. That is correct.

Q. Are there any tables?

A. There are a few tables there.

Q. During the period from the commencement of this action which I believe was on February 25, 1946, to the present time, has there been any change in the interior of the premises?

A. Not at all.

Q. Has there been any change during that period in what has been served in the premises? [227]

A. Not at all, nothing.

Q. Will you tell me during that period of time, what has been served since February 25, 1946, when this action was commenced?

A. The only change then was that previously the Board of Equalization had not clamped down on the rule of serving food in bars, which they have done recently for some unknown reason, and up to that time, in order to comply with the law, we kept a few kinds of food on hand if the customers demanded it, and if the customer insisted on anything to eat more than that we could always go out and buy a meal and bring it in, but I do not think we ever had occasion to buy a meal for a customer and bring it into the place in the two-year period.

Mr. Sullivan: I move to strike all of this as a conclusion and opinion of the witness, especially in

(Testimony of Nicholas Sahati.)

view of his testimony he had only been in the premises five times during this period.

The Witness: I did get reports daily and weekly.

Mr. Sullivan: In any event, it is hearsay.

The Court: It will go out.

Mr. Picard: Just tell us what you know yourself.

A. I do know that they have never had occasion to or been asked to serve a meal.

Mr. Sullivan: I will object to the testimony and I move to strike out that answer. It is obviously hearsay. I submit that the witness should be made to testify to the five specific [228] occasions he said he was in these premises.

The Witness: If you will give me a chance to explain——

Mr. Picard: Don't argue with Mr. Sullivan. He is talking to the Court.

Mr. Sullivan: May the answer go out?

The Court: Yes.

Mr. Picard: I want you to testify on matters within your own knowledge, obtained by personal observation of the premises. What has been served in the Stork Club since you and your associates took possession of it?

Mr. Sullivan: I will object to that question both as to form and as to the answer for which it calls.

The Court: If he knows, he may answer. Tell us of your own knowledge.

A. No heavy meal has been served in the Stork

(Testimony of Nicholas Sahati.)

Club since we took possession. Had such a meal been served——

Mr. Picard: Don't go into that.

A. No meal has been served since we took possession.

Q. What has been served there?

A. A few slices of cold meat, that we are able to keep on hand, in order to simply conform with the law regulating the operation of bars.

Q. Has any liquor been served there?

A. Yes.

Q. What type of liquor? [229]

A. Various types, blends and straight whisky, Scotch, etc.

Q. Have you seen any menu that has been there?

A. Not at all.

Q. Have there been any menus there?

A. No.

Q. Any wine list?

A. The only list was when the OPA required the posting of prices of wine and liquor; there was no wine list that was attached to a menu.

Q. Has the place been conducted along the lines of what are commonly known as taverns or bars?

Mr. Sullivan: I will object to that as calling for a conclusion of the witness.

The Court: I think we are going into minute details which have no place in the case.

Q. (By Mr. Picard): Mr. Sahati, what type of entertainment was put on at the place at the time it had entertainment there?

(Testimony of Nicholas Sahati.)

A. The only entertainment that was put on at the place when we took over, when we purchased from the previous owner, Bill Bush, was they had an orchestra, and they continued with them for about a month, and I would say at two or three intervals in the succeeding two years of our possession, we employed a pianist for a few days at a time; when we found it was not very profitable, we let it go. That pianist may have been a girl or a man. [230]

Q. Has there been any dancing at any time in the premises?

A. None whatsoever at any time.

Q. How many employees have you been employing in the Stork Club since you and your associates have operated it?

A. There is a manager, and there is one bartender—there are two bartenders, a bar maid, a waitress at times, she is not always there, no steady employment for her straight through, maybe three days a week, or a week when exceptionally busy; the manager may put her on a week; I would say there is about four steady employees.

The Court: We will take a recess.

(Recess.)

Mr. Picard: At the premises known as the Stork Club at 200 Hyde Street, San Francisco, is there any dance floor?      A. No.

Q. Is there any dancing permitted in the premises?      A. No, sir.

(Testimony of Nicholas Sahati.)

Q. If the place were filled with as many people as it could hold, how many people could get into it?

A. If it was jammed full, there would be about 50 people could get in it.

Mr. Picard: That is all.

Mr. Sullivan: I have no further questions.

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### HAVILOCK FOURNESS

called as a witness for the plaintiff, sworn.

The Clerk: Will you state your name to the Court?      A. Havilock Fourness.

#### Direct Examination

By Mr. Sullivan:

Q. Mr. Fourness, you are employed by whom?

A. The City and County of San Francisco.

Q. Are you in the Recorder's office of the City and County of San Francisco?      A. Yes.

Q. I have subpoenaed the Recorder's office to bring here certain official records. Have you brought those records?      A. Yes.

Q. And are the records which you have here the official records of the City and County of San Francisco?      A. Yes.

Q. Is it part of the regular course of business of the Recorder's office of the City and County of San Francisco to keep in volumes such as you have there

(Testimony of Havilock Fourness.)

as official records, the records of various documents which are placed of record?      A. Yes.

Q. Are those various documents when they are placed of record kept in volumes in your office in the regular course of business?      A. Yes.

Q. And this volume which you have here is official records, is [232] it?      A. Yes.

Q. Now, would you mind turning to—what volume is that, Mr. Fourness?      A. 4,215.

Q. Would you turn to Page—I believe I gave you the page number—Page 476?      A. Yes.

Q. Do you find on Page 476 of Volume 4,215 of the official records of the Recorder of the City and County of San Francisco a notice of intended transfer by one W. N. Bush with respect to the premises at 200 Hyde Street? You can answer that yes or no.      A. Yes.

Q. Would you please read from the official record what you see there with respect to that intended transfer?

A. “Notice of Intended Transfer by W. N. Bush. Notice is hereby given that W. N. Bush of 200 Hyde Street, San Francisco, California, intends to transfer to Zafer Sahati, A. E. Syufy, Edmund Sahati, Sally Sahati, A. Ansara and M. Sahati of 200 Hyde Street, San Francisco, California, an on-sale beer and wine license and an onsale distilled spirits license, which were issued to 200 Hyde Street. There is no consideration involved in this transfer. The transfer will take place on the premises on March 14, 1945. W. N. Bush, transferee.



(Testimony of Havilock Fourness.)

Recorded at the request of vendee [233] March 7, 1945, at 2:05 p.m. T 45673, fee \$1.00, folio 3, in said book of compared documents. Backstedt."

Mr. Sullivan: That is all.

Mr. Picard: No questions.

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THOMAS O'CONNOR

called as a witness on behalf of the plaintiff, sworn.

The Clerk: Will you state your name to the Court? A. Thomas O'Connor.

Direct Examination

By Mr. Sullivan:

Q. Where do you live, Mr. O'Connor?

A. 1439 Schrader Street.

Q. You are an attorney at law?

A. That is right.

Q. You are associated with the law firm of Malone & Sullivan? A. Yes.

Q. The office address is 849 Mills Building, San Francisco? A. That is right.

Q. Mr. O'Connor, at my request did you in September of 1946 visit the premises of the establishment called the Stork Club at 200 Hyde Street, San Francisco? A. I did.

Q. I will show you Plaintiff's Exhibit 74 in evidence, which is a match pad, and ask you if you have seen that before. A. Yes, I have. [234]

Q. Where did you get that?

(Testimony of Thomas O'Connor.)

A. I got that at the premises of the Stork Club at 200 Hyde Street.

Q. Can you tell us briefly the circumstances under which you got that?

A. I stood at the bar and the matches were on the bar and I picked one up and took it out.

Q. You had a drink at the same time, didn't you?      A. Yes.

Q. I mean, you did not take it without giving some consideration?      A. No.

Q. You did not have to pay for the matches?

A. No.

Q. Mr. O'Connor, did you at my request make an examination of the interior of the premises on that occasion?      A. Yes, I did.

Q. Did you at my request make an examination of the interior to ascertain if there were any insignia consisting of a stork or some similar object in the interior of the premises?      A. Yes.

Q. Did you see any?

A. Yes, there were two stork insignia on the premises, the first as you came in the door was on the carpet, and this was a stork standing on one leg with a cane under its wing, with a [235] top hat and cocktail glass; this was woven into the carpet; it was an insignia about, I should judge, two feet in length and two feet in depth.

The other stork insignia was on the juke box of the premises, and that was a stork that was painted on the glass of the juke box, and the stork was

(Testimony of Thomas O'Connor.)

standing on one leg with a top hat, and in its bill was a diaper, and in the diaper was seated a young lady.

Mr. Sullivan: That is all.

#### Cross-Examination

By Mr. Picard:

Q. Now, Mr. O'Connor, with respect to the stork that you say was woven in the carpet, was that on the floor?

A. That is right; it was woven in the carpet on the floor at the entrance to the premises.

Q. And the other one was on the juke box?

A. On the front of the juke box, the glass cover, above the part where you put in the money.

Mr. Picard: That is all.

Mr. Sullivan: That is all.

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#### GEORGE CAVANAUGH

called as a witness on behalf of the plaintiff, sworn.

The Clerk: Will you state your name to the Court? A. George Cavanaugh.

#### Direct Examination

By Mr. Sullivan:

Q. By whom are you employed?

A. State Board of Equalization, Liquor Control Division.

Q. Have you been subpoenaed to bring certain

(Testimony of George Cavanaugh.)

records pertaining to the liquor license and application therefor for the premises at 200 Hyde Street in San Francisco?      A. Yes.

Q. You have brought those here, have you?

A. Yes.

Q. And are those records which you have brought here contained in the folder you have in the witness chair?      A. Yes.

Q. And are the records which you have brought the official records of the State Board of Equalization of California?

A. Of the Liquor Control Division, yes.

Q. Of the Liquor Control Division of the State Board of Equalization?      A. Yes.

Q. Are they records made in the ordinary and regular course of business by the Liquor Control Division?      A. They are.

Q. And is it part of the regular and ordinary course of business of the Liquor Control Division to make such records?      A. It is.

Q. And from your knowledge of those records and the various entries therein made at the time the transaction indicated [237] occurred or within a reasonable time in the record?

A. That is correct.

Q. Do you find an application for a liquor license for the premises at 200 Hyde Street made by N. Sahati with other people?      A. Yes, there is.

Q. May I see it, please?      A. Yes.

Mr. Sullivan: I will show it to counsel, if your

(Testimony of George Cavanaugh.)

Honor please, because I am going to have the witness read this part of it into evidence.

Q. Mr. Cavanaugh, you have shown me and I have exhibited to counsel and he has examined it, an application for transfer, entitled "Application for Transfer of Alcoholic Beverage License," addressed to the State Board of Equalization, Alcoholic Beverage Control Division, 1020 N Street, Sacramento, Calif. By whom is that application signed?

A. N. Sahati, Zafer Sahati, A. E. Syufy, Albert Ansara, Edmond Sahati, Sally Sahati.

Q. What was the date, Mr. Cavanaugh, on which this application was filed?

A. The date of the application, which is the same date as the date of notarization, is March 14, 1945.

Q. And do your records disclose the license was issued pursuant to that application? [238]

A. It does.

Q. What date was the license issued?

A. At that time there were two licenses applied for, an onsale beer and wine license and an onsale distilled spirits license. The first one, onsale beer and wine license, was dated April 6, 1945, and the second, distilled spirits license, bears the date of issuance April 6, 1945.

Q. Mr. Cavanaugh, do you find in your file with respect to the premises at 200 Hyde Street, an application made by a prior holder of licenses, one W. N. Bush, which bears the name Stork Club?

A. Yes, there is an application for an onsale

(Testimony of George Cavanaugh.)

distilled spirits license and onsale beer and wine license dated March 1, 1943, in the name of William N. Bush. The name under which the business was to be conducted is Stork Club. Location of the premises, 200 Hyde Street, San Francisco, San Francisco County.

Q. And was there a license issued pursuant to that?

A. Yes, an onsale beer and wine license dated March 25, 1943, and on sale distilled spirits license dated March 25, 1943, in favor of William N. Bush, DBA Stork Club, 200 Hyde Street, San Francisco; each of the licenses bears the same signature, W. N. Bush, DBA Stork Club, 200 Hyde Street, San Francisco.

Q. Mr. Cavanaugh, do you find an indication in your file for the premises at 200 Hyde Street of the name Stork Club prior to that date? [239]

A. No. The former license was to Pat Kelly, who conducted the business under the name of Elbow Room, 200 Hyde Street, San Francisco.

Mr. Sullivan: That is all.

#### Cross-Examination

By Mr. Picard:

Q. Mr. Cavanaugh, is there anything in your file to indicate the date when the name of the premises was changed from Elbow Room to Stork Club?

A. The only thing to indicate that would be the application that was made by William N. Bush. Previous to that time the place was operated by

(Testimony of George Cavanaugh.)

Pat Kelly who transferred it upon the 3rd of January, 1943, to William N. Bush, and that is the first time that we have the name Stork Club used.

Q. When did Pat Kelly obtain that license?

A. June 15, 1942.

Q. Now, referring to the license that was issued in the name of Sahati, et al., after that license was issued on April 6, what was done with it?

A. The date of the license is April 6. In the normal course of distribution of licenses, we would receive that license the next morning, and it would then be delivered, to the premises at 200 Hyde Street. The only exception to that would be if the 6th of April would be on a Friday, the license wouldn't be delivered until the following Monday; we would not pick up the mail probably until Monday, and if it came in Saturday, there [240] would not be a supervisor there to open it, and it would not be opened until Monday, so the delivery would not be until the following Monday. I do not know what day the 6th of April was; I mean if it was Friday, it would have been delivered the following Monday. Otherwise, it would be delivered the next day.

Q. Wasn't it sometimes delayed by reason of sales tax or other matters?

A. Not at that time. It is only within the last year that they have changed the system, so that they hold it until they get a release from the Sales Tax Division. That is within the last year.

Q. You are sure that is only within the last year?

(Testimony of George Cavanaugh.)

A. I am positive, because I know it was following the death of Dan Dwyer, who had the premises at 7th and Market, and after he died there was a loss of taxes that occurred in connection with that, and from then on we have to get a release of the Sales Tax Division before we distribute the licenses.

Mr. Picard: I think that is all.

Mr. Sullivan: That is all.

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G. DECKER

called as a witness on behalf of the plaintiff, sworn.

The Clerk: Will you state your name for the Court?      A. G. Decker. [241]

Direct Examination

By Mr. Sullivan:

Q. Mr. Decker, you are an employee of the State Board of Equalization of the State of California?

A. Yes, Beverage Sales Tax Division.

Q. Have you with you the official records of the State Board of Equalization of the State of California pertaining to the sales tax permit of the premises at 200 Hyde Street, San Francisco?

A. I have.

Q. Are those records kept and maintained in the regular and ordinary course of business?

A. Yes.

Q. And is it part of the regular and ordinary



(Testimony of G. Decker.)

course of business of the Sales Tax Division to keep those records?      A. Yes.

Q. Do you have a record of the date upon which the sales tax permit was issued to N. Sahati and other people at the premises at 200 Hyde Street?

A. Yes.

Q. May I see that record?      A. Yes.

The Court: What does the record disclose? Just state it.

A. The record discloses that the starting date of Sahati is 3/16/45.

Q. (By Mr. Sullivan): That would be March 16, 1945? [242]      A. Yes.

Q. Do you have also with you your audit sheet pertaining to the account of Mr. Bush?

A. Yes.

Q. Does that disclose the last date for which Mr. Bush paid sales tax to the State of California?

A. Yes, 4/11/45.

Q. That is April 11, 1945?      A. Yes.

#### Cross-Examination

By Mr. Picard:

Q. Now with reference to the sales tax permit which was issued on March 16, 1945, it is necessary before an application can be made for a transfer of a liquor license, that the applicant go to the Sales Tax Division of the State of California and obtain that sales tax permit and then take it with him in making an application for the transfer of a liquor license; is that correct?      A. Yes.

(Testimony of G. Decker.)

Mr. Picard: That is all.

Mr. Sullivan: At this time, if your Honor please, plaintiff respectfully makes a motion that all evidence introduced by the plaintiff in this case, oral or documentary, of whatsoever nature, be applied in support of and in proof of the allegations of the first count of plaintiff's complaint and also all allegations of the second count of plaintiff's complaint. [243]

Mr. Picard: No objection, your Honor.

Mr. Sullivan: Plaintiff rests, your Honor.

Mr. Picard: Now, if your Honor please, at this time I move that all of the exhibits and evidence which were admitted over objection or in which the Court ruled that they would be admitted subject to a motion to strike, now be stricken from the record.

Mr. Sullivan: We resist the motion.

The Court: I will allow the evidence to stand and the motion will be denied.

Mr. Picard: At this time, if your Honor please, I move that the plaintiff be non-suited on the first and second counts of the complaint herein, upon the ground that it is obvious from the testimony here that there is neither any unfair competition or exclusive right to the name under the facts that have been shown here; that the distance of three thousand miles between the two places of business, that the different types of business, and the nature of them has been clearly brought out by the evidence produced by the plaintiff itself; I submit, if your

(Testimony of G. Decker.)

Honor please, that the plaintiff is not entitled to any relief.

Mr. Sullivan: We resist that motion, if your Honor please, and we are prepared to do anything that the Court desires with respect to the presentation of legal authorities. Mr. Picard has not made anything but the brief outline of his [244] action. We are prepared to argue it orally or submit it in briefs, whatever your Honor wishes.

The Court: Are you prepared to argue the matter now?

Mr. Picard: Yes.

Mr. Sullivan: Yes.

The Court: Proceed.

(Counsel thereupon argued the motion.)

The Court: I will reserve a ruling. You may put in your evidence this afternoon.

Mr. Picard: Very well.

(A recess was here taken until 2 p.m.) [245]

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Afternoon Session

NICHOLAS M. SAHATI

recalled for defendants.

Direct Examination

By Mr. Picard:

Q. Mr. Sahati, there has been testimony here that there was a juke box in your place of business known as the Stork Club at 200 Hyde Street which

(Testimony of Nicholas M. Sahati.)

had a stork on it. Does that juke box belong to you and your associates?      A. No.

Q. How did that juke box come there?

A. Well, this juke box was placed there by a music outfit that takes a percentage of what is taken in, and they probably brought it in.

Mr. Sullivan: I move to strike that.

The Court: They brought it in?

A. They brought it in; and the insignia of the stork appears on several other boxes that they have had in different parts of San Francisco. It was not any particular insignia that they placed on there because of the Stork Club.

Q. (By Mr. Picard): Did you order a juke box with a stork on it?      A. No.

Q. It made no difference to you what insignia was on it?      A. No.

Mr. Sullivan: If the Court please, I object to that as immaterial, irrelevant and incompetent.

The Court: It may not be material; the fact was that it [246] was on there.

Mr. Picard: That is all.

#### Cross-Examination

By Mr. Sullivan:

Q. Did you ever see a stork on any other juke box?      A. I did not see them personally.

Mr. Sullivan: Then, if your Honor please, I move to strike all that evidence as being hearsy.

Mr. Picard: Not all of the testimony.

(Testimony of Nicholas M. Sahati.)

Mr. Sullivan: The testimony with respect to the existence of other juke boxes with storks on them.

The Court: It may go out.

Mr. Sullivan: No further questions.

Mr. Picard: The defendants rest.

Mr. Sullivan: The plaintiff rests.

The Court: You may now proceed with the argument.

Mr. Picard: Just a moment before counsel goes on. I think for the purpose of the record I will withdraw the motion for a non-suit in view of the fact that testimony has been offered by the defendant, and submit the matter so that there can be a decision on the case.

The Court: Is it submitted on both sides?

Mr. Picard: Yes.

Mr. Sullivan: Yes.

(Thereupon counsel argued the case.)

The Court: The injunction will have to be denied. [247]

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### CERTIFICATE OF REPORTER

I, E. W. Lehner, Official Reporter, certify that the foregoing 247 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

[Title of District Court and Cause.]

Monday, April 28, 1947

### SETTLEMENT OF FINDINGS

Mr. Picard: Counsel has filed what is called amendments to findings but it is really a sort of an attempt to make a motion for a new trial by substituting findings and conclusion which are contrary to your Honor's decision.

Mr. Sullivan: I want to say that is not so; it was not intended to be such, and Mr. Picard has certainly ascertained by reading my findings that it could not have that appearance. Does your Honor want me to begin on this matter? I proposed the amendments.

The Court: I think the better thing to do is to take up the findings. What is it that you have in mind?

Mr. Sullivan: There are several things, if the Court please. You will remember that during the three days of trial the defendants' case consisted of about three minutes—I would say not in excess of five minutes—of testimony, counting the cross-examination, and most of that testimony upon my motion your Honor struck out, so that the actual evidence admitted by the Court with respect to the defendants' case would probably be down to one of the smallest minimum that has ever been done in this court, so that you have a situation where all of the evidence in the case has been produced by the plaintiff.

The Court: Counsel says there is not sufficient evidence to sustain your findings. You will have to explain that to justify your findings.

Mr. Picard: I think I have made a reasonably fair statement of the evidence in my findings.

The Court: I did not examine them myself. I depended on you.

Mr. Picard: I tried to do it.

(Thereupon counsel argued the findings.)

The Court: I am going to sign the findings.

Mr. Sullivan: May I for the purpose of the record: on behalf of the plaintiff may an exception be noted in the record to the signing of the defendants' proposed findings?

The Court: Yes.

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#### CERTIFICATE OF REPORTER

I, E. W. Lehner, Official Reporter, certify that the foregoing 2 pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

[Endorsed]: No. 11657. United States Circuit Court of Appeals for the Ninth Circuit. *Stork Restaurant, Inc.*, a corporation, Appellant, vs. *N. Sahati, Zafer Sahati, Sally Sahati, Edmond Sahati, Alfred Ansara, A. E. Syufy*, Appellees. Transcript of Record. Upon Appeal from the District Court

of the United States for the Northern District of California, Southern Division.

Filed June 17, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

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In the United States Circuit Court of Appeals  
in and for the Ninth Circuit

No. 11,657

STORK RESTAURANT, INC., a corporation,  
Appellant,

vs.

N. SAHATI, ZAFER SAHATI, SALLY SA-  
HATI, EDMOND SAHATI, ALFRED AN-  
SARA and A. E. SYUFY,

Appellees.

STIPULATION DISPENSING WITH  
PRINTING OF ORIGINAL EXHIBITS

It Is Hereby Stipulated, by and between the parties hereto, that the original exhibits to be used on the consideration of this appeal, other than Plaintiff's Exhibits Nos. 70, 71, 72, 73, 74 and 75, need not be reproduced in the record herein; and

It Is Further Stipulated that all exhibits ad-



mitted in evidence in said action may be considered by the above entitled Court in their original form.

Dated: June 20, 1947.

MALONE & SULLIVAN,  
/s/ WILLIAM M. MALONE,  
/s/ RAYMOND L. SULLIVAN,  
Attorneys for Appellant.  
/s/ ALBERT PICARD,  
Attorney for Appellees.

It is so Ordered.

/s/ FRANCIS A. GARRECHT,  
Judge of the above entitled  
Court.

[Endorsed]: Filed June 21, 1947.

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[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON APPEAL AND  
DESIGNATION OF PARTS OF RECORD  
NECESSARY FOR THE CONSIDERA-  
TION THEREOF

(Rule 19)

Comes now the appellant in the above-entitled appeal and presents and files its statement of the points on which it intends to rely on appeal, and designates the parts of the record which it things necessary for the consideration thereof, to-wit:

Statement of Points on Appeal

1. The trial court erred in failing to find and conclude that the appellant is the sole and exclusive

owner of, and solely and exclusively entitled to the use of the trade name "The Stork Club," and the trial court further erred in finding that appellant has no right to the trade name "The Stork Club" in the State of California.

2. The trial court erred in failing to find that appellant has expended considerable effort and large sums of money advertising and otherwise promoting its business and trade name by various methods and through various media, said expenditures not being limited to advertising in the State of New York, and the trial court further erred in finding that appellant's trade name "The Stork Club" has no value in the State of California.

3. The trial court erred in failing to find and conclude that the use by the appellees of the name "Stork Club" in the conduct and operation of their business, was wilful, wrongful and unlawful, in disregard of appellant's rights and without appellant's consent.

4. The trial court erred in failing to find that the use by appellees in the conduct and operation of their business of the name "Stork Club" and in conjunction therewith, insignia similar to appellant's insignia and consisting of a stork standing on one leg and wearing a high hat, was for the purpose of appropriating to themselves and benefiting by, the trade-name, good-will, fame, reputation and trade established by appellant.

5. The trial court erred in finding that appellees do not display or maintain any insignia similar to

appellant's insignia, and have not caused the name "Stork Club" or the related insignia to be used in their place of business or advertised or publicized to patrons, or profited from the same; and the trial court further erred in failing to find that appellees have used the name "Stork Club" in their financial and commercial transactions.

6. The trial court erred in finding that no confusion has arisen in the minds of the public or will arise or exist and none of the public will be deceived or misled into believing that appellee's business is connected or associated with, operated by or under the supervision of appellant, and the trial court further erred in failing to find that there is a reasonable liability and likelihood that such confusion and deception will arise and exist.

7. The trial court erred in finding that by reason of the acts of appellees in the conduct and operating of their business, including appellees' use of the name "Stork Club," no damage has been or will be caused to appellant's trade, business, trade-name, good-will, reputation or standing, or to the extension or development of appellant's patronage throughout the United States of America, or within the State of California, or the City and County of San Francisco, or at all.

8. The trial court erred in finding that appellant has not caused a demand to be made upon appellees to desist and discontinue their use of the trade-name "Stork Club" or the aforesaid related insignia.

9. The trial court erred in failing to find that appellees acquired no interest in the name "Stork Club" from their predecessor, W. N. Bush.

10. The trial court erred in finding and concluding that appellant has been guilty of laches.

11. The trial court erred in failing to conclude and hold that appellees' use of the name "Stork Club" and related insignia in the conduct and operation of their business constitutes an infringement upon, and invasion of, appellant's property rights therein.

12. The trial court erred in failing to conclude and hold that appellees' use of the name "Stork Club" and related insignia, in the conduct and operation of their business, constitutes an unfair trade practice.

13. The evidence does not support or sustain the findings of fact and conclusions of law, as aforesaid.

14. The trial court erred in allowing and admitting in evidence against appellant, and over the objection of appellant, testimony of the witness N. Sahati, one of the appellees, relating to the possession by appellees of their place of business on May 4, 1945, and May 15, 1945.

15. The trial court erred in holding and decreeing that appellant take nothing by this action as against defendants, or any of them, that an injunction be denied to appellant, and that appellees recover from appellant their costs and disbursements.

Designation of Parts of Record Deemed  
Necessary for Consideration of Appeal

Appellant designates the complete record, proceedings, evidence and exhibits in the action (original exhibits to be used in consideration of this appeal without reproduction in the record).

The foregoing statement of points on appeal and designation of parts of the record which appellant deems necessary for the consideration of said appeal is respectfully presented and filed in compliance with Rule 19, subdivision 6, of the Rules of Practice of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: June 19th, 1947.

MALONE & SULLIVAN,  
/s/ WILLIAM M. MALONE,  
/s/ RAYMOND L. SULLIVAN,  
Attorneys for Appellant.

Receipt of a copy of the within Statement of Points on Appeal and Designation of Parts of Record Necessary for the Consideration Thereof is hereby admitted this 19th day of June, 1947.

/s/ ALBERT PICARD, S.M.  
Attorney for Defendants.

[Endorsed]: Filed June 19, 1947.